



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
On May 24, 2004_____

Date of Meeting: August 4, 2003

The Mayor and Council of the city of Tucson met in regular session in the Mayor and Council Chambers in City Hall, 255 West Alameda, Tucson, Arizona, at 2:04 p.m., on Monday, August 4, 2003, all members having been notified of the time and place thereof.

1. **ROLL CALL**

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

José J. Ibarra
Carol W. West
Kathleen Dunbar
Shirley C. Scott
Steve Leal
Fred Ronstadt
Robert E. Walkup
Kathleen S. Detrick

Council Member Ward 1
Council Member Ward 2
Council Member Ward 3
Vice Mayor Ward 4
Council Member Ward 5
Council Member Ward 6
Mayor
City Clerk

Absent/Excused:

None

Staff Members Present:

James Keene
Mike Letcher
Ernie Duarte
Albert Elias
Michael House
Brad Detrick
Dennis McLaughlin

City Manager
Deputy City Manager
Development Services Director
Comprehensive Planning Task Force Dir.
City Attorney
Deputy City Attorney
Principal Assistant City Attorney

Leonard Castro
Sandra Slate
Kent Miller
Stephanie Juarez
Lannie Bugarin

City Clerk's Office
Recording Secretary
Recording Secretary
Recording Secretary
Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Reverend Roy Phillips, A Liberal Light in the Desert, after which the pledge of allegiance was presented by the entire assembly.

Presentations

Mayor Walkup proclaimed August 20, 2003, as the 228th Anniversary of the founding of the City of Tucson.

Sharon Chadwick accepted the proclamation and on behalf of the Tucson-Pima County Historical Commission invited everyone to participate in observing Tucson's history and founding on August 20, 2003, in El Presidio Park.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 426, dated August 4, 2003, would be received into and made a part of the record. He also announced that this was the time for any member of the council to report on current events and asked if there were any reports.

A. Back to School Bash

Vice Mayor Scott said she would be hosting the 3rd Annual Back to School Bash on Saturday, August 7, 2003. They would be serving a free breakfast and giving away free school supplies to children who attended with their parents. She thanked the volunteers, especially her staff, who put the event together, and those who donated enormous amounts of money to make the event happen. Her ward has held the event each year because they need to know they are a community, a family, and they have a lot of fun at the Clements Center, which is at 8123 E. Poinciana Drive.

B. One-Stop-Shop Resource Fair

Council Member West said she was approached by the American Institute of Architects about a resource fair for the Mt. Lemmon residents who will soon be faced with rebuilding their homes. The AIA feels it would be a lot easier on the residents if there was a one-stop-shop event, rather than being inundated by the many people who might contact them about their needs. She said the event would be held at the Tucson Convention Center on August 28, and 29, 2003. Many groups would be invited to participate, such as, nonprofit agencies, for profit businesses, contractors, service suppliers, the Southern Arizona Homebuilders Association, the American Institute of Architects and the Pima County government to help with the development process of rebuilding. A sponsor has volunteered to cover the cost of the exhibition hall. She thought it would help many people in a very big way.

C. Read to Me Program

Council Member Ronstadt said in response to the cutbacks in the library services, specifically story time, he and his staff felt it was appropriate to do something in a proactive manner. To that end they initiated a program called "Read to Me" at Himmel

Park library on Fridays, August 8, 15, 22, 29, and Saturdays on the August 21 and 28, from 10:00 a.m. to 12:00 noon in the children's reading area. He and his staff will be reading to any child that comes to the library during that time. This is a pilot that ward six is initiating to see if they can get more volunteers interested in reading to kids, which is critically important in the fight against illiteracy.

Mayor Walkup asked if there were any additional reports. There were none.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 427, dated August 4, 2003, would be received into and made a part of the record. He announced that this was the time for the city manager to report on current events and asked for his report.

A. Wildlife Conservation Plan

James Keene, city manager, reported that on July 14, 2003, the city was awarded a grant for \$328,000 from the US Fish and Wildlife Service to develop a habitat conservation plan, developed through a collaborative conservation planning effort with the town of Marana and Pima County. The primary planning area will consist of 40-square miles within the southeastern part of the city, the Santa Cruz River Corridor, and specific Tucson Water Department holdings in the Avra Valley.

B. *Hispanic Magazine* Recognition

Tucson was again named the seventh best city in the country for Latinos in the *Hispanic Magazine*, repeating its recognition last year. The magazine looks at 60 different cities across the country that have significant Latino populations and it makes its decisions by comparing housing markets, crime rates, employment and wage statistics, recreation, political representation, education and growth potential.

C. *House and Home Magazine* Recognition

This month's edition of *House and Home Magazine* lists America's best places to live. They rated 331 metropolitan areas and categories that include cost of living, crime rate, education, home prices, weather, et cetera and Tucson is number five of ten in their report. He read, "The Sun Belt is the fastest growing region of the United States and for good reason. Few places can compare to Tucson's natural beauty. Set in the Sonoran Desert it is amazingly pure. There is little snow and rain; it rarely gets too cold. In addition, it gets 287 days of sunshine a year." Mr. Keene said that was inaccurate, Tucson gets a lot more sunshine than that. He continued, "It is no surprise that this warm, sunny city, has spas, resorts and golf courses. The economy is doing well with health care costs and low unemployment rates." Mr. Keene said Tucsonans know they have more challenges than that, but when they look at how others see Tucson it is nice to be ranked number five. That concluded his report.

Mayor Walkup recognized Council Member Leal.

Council Member Leal said he thought he saw part of that article on the web. It looked at a number of variables, one of them asthma, and Tucson was ranked the worst for children and seniors, which was a surprise and cause for concern. He did not know whether it was a pollen issue, an auto issue, or an emission issue, but it was a serious issue. He would be asking the manager to report to the council so that they know what hand they have in it and what can be done to remedy it.

Mayor Walkup said he would like to move Tucson to number four and fix that.

5. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup announced that this was the time any member of the public was allowed to address the mayor and council on any issue that was not on the agenda. He had received several written requests from people wishing to speak and said he would call on those people in the order that he received their requests. There would be a second call to the audience at the end of the evening portion of the meeting.

A. Drug and Crime

John Horne, said prostitutes hang around his neighborhood at all hours of the day and night. There is a drug house located directly in front of where the school bus stops to drop off children from school. Drug abusers openly smoke crack pipes in his neighborhood streets and he is threatened when he tells the crack heads he does not want them in his neighborhood. Property is stolen, shots ring out in the middle of the night, waking up most of the residents. Trash is thrown in the streets daily, prostitutes leave their customers' used condoms between the vehicles and behind bushes, fences, and homes. Drug users and prostitutes harass the children and senior citizens, hypodermic needles are strewn where senior citizens and children walk and play. Tensions have risen in the neighborhood; he has experienced lack of sleep due to fights among crack heads and heroin addicts. He said the citizens of Keeling Neighborhood have these problems and seek protection from these illegal activities by the immediate and permanent removal of the drug house located at 2519 N. Estrella Avenue, #A. They also seek an injunction against the property owner who is well aware of these illegal activities and has shown no regard for the residents' desire for a clean, drug free neighborhood by continuing to rent the property as a drug house. A red tag that was placed on the property in March was removed and the property was reopened within three months. Mr. Horne said when he spoke to Mayor Walkup's wife she informed him that the mayor would do his best to take care of the problem. As a single parent, raising his children in the Keeling Neighborhood, he thought it was time for the city to cleanup the neighborhood.

Jamie Horne, reiterated her father's concern about the drug problem in the neighborhood. She is not allowed to go off their property to take her dog for a walk or anything like that. She cannot go anywhere without supervision, nor can any of her friends because their parents are so scared.

Mayor Walkup recognized Council Member Dunbar.

Council Member Dunbar said the subject address is in ward three and the Tucson Police Department made a bust there very recently. She was aware of the problem; people are working on it, the bicycle patrol knows about it and they patrol the neighborhood. She was doing everything she could to make sure the residents do not have to live as Mr. Horne and his daughter described.

Mayor Walkup asked if anyone else wished to address the council.

B. Dog Licensing Fees

Elisabeth Cameron, said she thought this was the fifteenth time she had addressed the council. She was present again because of the lack of concern by the mayor and council for loose animal issues in the city. The council refuses to put the issue on an agenda and to reverse the \$25 unaltered dog licensing fee, which was promised to the citizens at the time the fee was implemented. She said it was that failure on the part of the council that brought her to the meeting. She wanted to believe the mayor and council when they do things for citizens, when they say they will look at different things, but it seems to be a lie or something they say just to placate citizens. She said Council Member Ibarra was not confident that he could get a second, so she went to Council Member Leal's office, gave him documentation to support her three proposals, which she thought the council was familiar with, and after a month he had not returned her calls, nor his assistant. Since Council Member Dunbar wrote the ordinance, she felt she was responsible for the current problems and did not contact her. Vice Mayor Scott, although having previously told her that she would support her proposals and would help, had not done so and was told that she no longer supported them. She asked for a meeting with the Mayor and he said a meeting was not necessary.

Ms. Cameron said her point was that the Humane Society had proposed to charge \$25 per animal when people brought them in. The problem of loose animals is about to triple. In 1998, before the \$75 licensing fee for unaltered animals was passed and went into affect, ABAL, the Architectural Barrier Action League, a group for the disabled, told the council precisely why it would be a failure and everything they listed has come to pass. How many car accidents and mauling incidents caused by loose animals on the streets does it take, or how bad does the rabies issue have to get before the issue is placed on a mayor and council agenda or a committee is created to look at animal issues? Does someone have to die? Pima Animal Control only has four officers out during the day to address the more than 200 calls it receives everyday. Dangerous animals are not even being picked up. It took 12 hours and eight calls to remove a stray pit bull from her property on Saturday. Animal control would not be able to address the additional problem the Humane Society proposal would cause. The council needs to have the political courage to put these issues on an agenda, reverse the law, and create a nuisance animal ordinance that addresses the issues the city has, not be dependent on the county. They should create a committee of citizens to address animal issues on a regular basis. If the council cannot make a change, maybe the citizens need a change in leadership.

Mayor Walkup said he thought Ms. Cameron's comments warranted a response and called on Council Member Dunbar.

Council Member Dunbar said she had the numbers all worked out and meant to bring them to the mayor and council today, but had not. When the \$75 fee was enacted the goal was to have no intact animals. It was meant to lower the licensing of animals that are intact and raise the licensing of animals that were neutered. She had a meeting last week with Dr. Silva of Animal Control. They went through the numbers and, in fact, licensing of altered animals had increased steadily every year since the \$75 fee was enacted and licensing of unaltered animals had decreased. She would make sure that a memorandum was forwarded to her colleagues that showed the exact numbers. They are numbers from animal control.

Ms. Cameron said that was a little bit deceiving and repeated her request to have the issue placed on an agenda.

James Keene, city manager, interjected that there could be no discussion by the council members during call to the audience.

Mayor Walkup asked if anyone else wished to address the council. There was no one.

6. CONSENT AGENDA – ITEMS A THROUGH AA

Mayor Walkup announced that the reports and recommendations from the city manager on the consent agenda items would be received into and made a part of the record. He asked the city clerk to read the consent agenda items.

- A. ASSURANCE AGREEMENT: (S02-009) SILVERBELL AND IRONWOOD, LOTS 1 TO 34 AND COMMON AREAS "A", "B-1", "B-2" AND "C"
 - (1) Report from City Manager AUG4-03-437 W1
 - (2) Resolution No. 19655 relating to planning: authorizing the mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval in Case No. S02-009 of a final plat for the Silverbell & Ironwood Subdivision, Lots 1 to 34 and Common Areas "A", "B-1", "B-2", and "C"; and declaring an emergency.
- B. FINAL PLAT: (S02-009) SILVERBELL AND IRONWOOD, LOTS 1 TO 34 AND COMMON AREAS "A", "B-1", "B-2" AND "C"
 - (1) Report from City Manager AUG4-03-408 W1
 - (2) The City Manager recommends that, after the approval of the assurance agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- C. ASSURANCE AGREEMENT: (S02-036) COPPER VISTA, LOTS 1 TO 29 AND COMMON AREA "A"
 - (1) Report from City Manager AUG4-03-436 W5
 - (2) Resolution No. 19656 relating to planning: authorizing the mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval in Case No. S02-036 of a final plat for the Copper Vista Subdivision, Lots 1 to 29 and Common Area "A"; and declaring an emergency.
- D. FINAL PLAT: (S02-036) COPPER VISTA, LOTS 1 TO 29 AND COMMON AREA "A"

- (1) Report from City Manager AUG4-03-409 W5
 - (2) The City Manager recommends that, after the approval of the assurance agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- E. REAL PROPERTY: VACATION AND SALE OF SURPLUS CITY PROPERTY ON CAMINO ARRIBA TO ADJ VENTURES
- (1) Report from City Manager AUG4-03-411 W1
 - (2) Ordinance No. 9873 relating to real property; vacating and declaring certain city-owned real property on Camino Arriba to be surplus, authorizing the sale thereof to ADJ Ventures, LLP; and declaring an emergency.
- F. REAL PROPERTY: VACATION AND SALE OF SURPLUS CITY PROPERTY IN TUCSON MOUNTAINS TO PIMA COUNTY
- (1) Report from City Manager AUG4-03-412 OUTSIDE THE CITY
 - (2) Ordinance No. 9874 relating to real property; vacating and declaring certain city-owned real property in Section 32, T14S R13E, to be surplus, authorizing the sale thereof to Pima County; and declaring an emergency.
- G. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COMMUNITY COLLEGE FOR A NEW TRAFFIC SIGNAL ON IRVINGTON ROAD AT CALLE SANTA CRUZ
- (1) Report from City Manager AUG4-03-413 W1
 - (2) Resolution No. 19642 relating to traffic; authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and Pima Community College for a new traffic signal on Irvington Road at Calle Santa Cruz; and declaring an emergency.
- H. COMMUNITY SERVICES: APPOINTMENT OF DOROTHY PAYNE TO THE BOARD OF COMMISSIONERS FOR THE PUBLIC HOUSING AUTHORITY
- (1) Report from City Manager AUG4-03-415 CITY-WIDE
 - (2) Resolution No. 19643 relating to community services; reaffirming the Mayor and Council of the City of Tucson as the Board of Commissioners for the City's Public Housing Authority (PHA), approving the appointment of a resident participant to the PHA; and declaring an emergency.
- I. AGREEMENT: WITH PIMA ASSOCIATION OF GOVERNMENTS FOR TRANSPORTATION PLANNING AND PROFESSIONAL SERVICES
- (1) Report from City Manager AUG4-03-442 CITY-WIDE

- (2) Resolution No. 19658 relating to transportation; approving and authorizing the agreement with Pima Association of Governments for Transportation Planning and Professional Services during FY 2004; and declaring an emergency.
- J. SUBCONTRACT AGREEMENT: WITH THE UNIVERSITY OF ARIZONA FOR A NATIONAL SCIENCE FOUNDATION GRANT
 - (1) Report from City Manager AUG4-03-417 CITY-WIDE
 - (2) Resolution No. 19644 relating to law enforcement; approving and authorizing execution of the subcontract with the University of Arizona reference the National Science Foundation Grant No. EIA-9983304; and declaring an emergency.
- K. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR BIOTERRORISM PREPAREDNESS AND RESPONSE GRANT
 - (1) Report from City Manager AUG4-03-416 CITY-WIDE
 - (2) Resolution No. 19645 relating to intergovernmental agreements; authorizing and approving the execution of an Intergovernmental Agreement with Pima County for Bioterrorism Preparedness and Response Grant; and declaring an emergency.
- L. APPROVAL OF MINUTES: October 7, 2002
 November 25, 2002;
 December 2, 2002;
 February 10, 2003;
 June 9, 2003
- M. INTERGOVERNMENTAL AGREEMENT: WITH THE UNIVERSITY OF ARIZONA FOR THE UNIVERSITY OF ARIZONA PIMA COUNTY 4-H PORTABLE CHALLENGE MODEL PROJECT
 - (1) Report from City Manager AUG4-03-422 CITY-WIDE
 - (2) Resolution No. 19650 relating to intergovernmental agreements; authorizing and approving the execution of an Intergovernmental Agreement with the University of Arizona Board of Regents for the University of Arizona Pima County Cooperative Extension 4-H Portable Challenge Model Project; and declaring an emergency.
- N. INTERGOVERNMENTAL AGREEMENT: WITH THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR TITLE XX SOCIAL SERVICES BLOCK GRANT FUNDS
 - (1) Report from City Manager AUG4-03-423 CITY-WIDE

- (2) Resolution No. 19649 relating to intergovernmental agreements; rescinding Resolution No. 19561, approving and authorizing execution of an Intergovernmental Agreement with the Arizona Department of Economic Security for Title XX Social Services Block Grant Funds; and declaring an emergency.
- O. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR A CHILD CAR SAFETY PROGRAM
 - (1) Report from City Manager AUG4-03-421 CITY-WIDE
 - (2) Resolution No. 19648 relating to intergovernmental agreements; authorizing and approving the execution of an Intergovernmental Agreement with Pima County for Child Car Safety Program Grant; and declaring an emergency.
- P. REAL PROPERTY: VACATION AND CONVEYANCE OF ALLEY RIGHT-OF-WAY LOCATED IN THE RANDOLPH ADDITION TO THE ADJOINING PROPERTY OWNERS
 - (1) Report from City Manager AUG4-03-420 W5
 - (2) Ordinance No. 9877 relating to real property; vacating and declaring certain portions of city-owned alley right-of-way between Fifteenth Street, Sixteenth Street, Santa Rita Avenue, and Highland Avenue to be surplus, and authorizing the no-cost conveyance thereof to the adjoining property owners; and declaring an emergency.
- Q. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR YOUTH DEVELOPMENT ACTIVITIES
 - (1) Report from City Manager AUG4-03-418 W1, W3, W5, W6
 - (2) Resolution No. 19646 relating to intergovernmental agreements; authorizing and approving the execution of an Intergovernmental Agreement with Pima County for Youth Development Activities; and declaring an emergency.
- R. GRANT AGREEMENT: WITH THE NATIONAL PARK SERVICE FOR PRESERVATION AND RESTORATION OF VISTA DEL RIO ARCHEOLOGY PARK
 - (1) Report from City Manager AUG4-03-419 W2
 - (2) Resolution No. 19647 relating to parks and recreation; approving and authorizing the Grant Agreement with the National Park Service for the preservation and restoration of Vista Del Rio Archeology Park; and declaring an emergency.
- S. AWARD AGREEMENT: WITH THE ARIZONA ATTORNEY GENERAL FOR A VICTIMS' RIGHTS IMPLEMENTATION ASSISTANCE PROGRAM

- (1) Report from City Manager AUG4-03-428 CITY-WIDE
 - (2) Resolution No. 19651 relating to city attorney; authorizing and approving the execution of an award agreement with the Arizona Attorney General's Office for a Victims' Rights Implementation Assistance Program; and declaring an emergency.
- T. TUCSON CODE: AMENDING (CHAPTER 22) RELATING TO THE BENEFIT PLAN FOR PUBLIC SAFETY EMPLOYEES
 - (1) Report from City Manager AUG4-03-432 CITY-WIDE
 - (2) Ordinance No. 9878 relating to leave benefit plan; amending Tucson Code Chapter 22, Article V, Section 22-91 and 22-94, exempting Commissioned Public Safety Employees from floating holiday, providing for birthday holiday for Commissioned Public Safety Employees, providing for retroactive effective date, decreasing qualifying years for annual sick leave payment for Commissioned Police Officers, providing for retroactive implementation and effective date; and declaring an emergency.
- U. ELECTIONS: DESIGNATING POLLING PLACES AND APPOINTING ELECTION BOARDS FOR THE SEPTEMBER 9, 2003 PRIMARY ELECTION
 - (1) Report from City Manager AUG4-03-431 CITY-WIDE
 - (2) Resolution No. 19652 relating to elections; designating the polling places where votes may be cast in the City of Tucson's September 9, 2003 Primary Election; listing precincts combined for the Primary Election, with one designated polling place; listing precincts whose designated polling place is located within an adjacent precinct; and declaring an emergency.
 - (3) Resolution No. 19653 relating to elections; appointing officials who will serve as members of the precinct election boards, early ballot processing boards, and other special election boards for the City of Tucson's September 9, 2003 Primary Election; and declaring an emergency.
- V. REAL PROPERTY: ACQUISITION OF EASEMENTS NEAR THE HAYDEN-UDALL WATER TREATMENT PLANT (CONTINUED FROM THE MEETING OF JUNE 30, 2003)
 - (1) Report from City Manager AUG4-03-440 OUTSIDE THE CITY
 - (2) Resolution No. 19634 relating to real property; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, certain easements needed for the installation of a fiber-optic communication line to the Hayden-Udall Water Treatment Plant; and declaring an emergency.

- W. ASSURANCE AGREEMENT: (S02-042) STONE CURVES, 48 CONDOMINIUM UNITS, COMMON AREA, DRAINAGE AREA "A", LANDSCAPE AREA "B", AND VEHICULAR USE AREA "C"
- (1) Report from City Manager AUG4-03-438 W3
 - (2) Resolution No. 19654 relating to planning: authorizing the mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval in Case No. S02-042 of a final plat for the Stone Curves a Condominium Subdivision, 48 Condominium Units, ~~Drainage Area "A", Landscape Area "B" and Vehicular Use Area "C".~~ and Common Areas "A", "B", and "C"; and declaring an emergency.
- X. FINAL PLAT: (S02-042) STONE CURVES, 48 CONDOMINIUM UNITS, COMMON AREA, DRAINAGE AREA "A", LANDSCAPE AREA "B", AND VEHICULAR USE AREA "C"
- (1) Report from City Manager AUG4-03-439 W3
 - (2) The City Manager recommends that, after the approval of the assurance agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- Y. FINANCE: CONTINGENCY FUND TRANSFER FOR THE KOREAN WAR COMMEMORATION CEREMONY
- (1) Report from City Manager AUG4-03-435 CITY-WIDE
 - (2) Resolution No. 19657 relating to finance; approving and authorizing the transfer of Seventy Dollars (\$70) from the Contingency Fund to Organization 001-183-1838-268, for Korean War Commemoration Ceremony; and declaring an emergency.
- Z. GRANT: APPROVAL OF GRANT FUNDS FROM THE ARIZONA DEPARTMENT OF PUBLIC SAFETY FOR THE "LOCK OUT BURGLARS" PROGRAM
- (1) Report from City Manager AUG4-03-444 CITY-WIDE
 - (2) Resolution No. 19659 relating to police; authorizing and approving the Criminal Justice Enhancement Fund Lock Out Burglars Grant with the Arizona Department of Public Safety; and declaring an emergency.
- AA. GRANT AGREEMENT: WITH THE ARIZONA CRIMINAL JUSTICE COMMISSION FOR DRUG CONTROL AND SYSTEM IMPROVEMENT
- (1) Report from City Manager AUG4-03-443 CITY-WIDE
 - (2) Resolution No. 19660 relating to grants; approving and authorizing execution of a Drug Enforcement Grant Award with the Arizona Criminal Justice Commission for Drug Control and System Improvement; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Vice Mayor Scott, that consent agenda items A through AA be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any discussion.

Council Member Ibarra thanked staff for their diligent work regarding the intergovernmental agreement with Pima Community College, consent agenda item G, for a traffic signal on Irvington Road at Calle Santa Cruz. He thought a lot of people would be safer exiting Pima College onto city streets.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Consent agenda items A through AA were declared passed and adopted by a roll call vote of 7 to 0.

7. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced that city manager's communication number 434, dated August 4, 2003, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

(b) New License(s)

*	(1)	O'SHAUGHNESSY'S 2200 N. Camino Principal Applicant: Sam O. Stangl City #038-03, located in Ward 2 Series #12	<u>Staff Recommendation</u> Police: In Compliance DSD: In Compliance Bus. License: In Compliance
	(2)	RADISSON SUITES TUCSON 6555 E. Speedway Blvd. Applicant: David W. Muth City #044-03, located in Ward 2 Series #11	<u>Staff Recommendation</u> Police: In Compliance DSD: In Compliance Bus. License: In Compliance
**	(3)	VINUM 3840 E. Grant Road Applicant: Bessie J. Lietzau City #045-03, located in Ward 6 Series #4	<u>Staff Recommendation</u> Police: In Compliance DSD: In Compliance Bus. License: In Compliance

*Withdrawn by the applicant

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| (4) | RISKY BUSINESS
250 S. Craycroft Road #140
Applicant: Robert K. Raynor
City #046-03, located in Ward 6
Series #12 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| (5) | TACO LOCO
4980 S. Campbell Avenue
Applicant: Carlos D. Velderrain
City #047-03, located in Ward 5
Series #12 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| (6) | ZONA 78 WOOD FIRED FOODS
78 W. River Road
Applicant: Thomas P. Firth
City #048-03, located in Ward 3
Series #12 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| (7) | CIRCLE K STORE #6469
1720 W. Irvington Road
Applicant: Kim K. Kwiatkowski
City #049-03, located in Ward 5
Series #10 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| (8) | KAMPAI
4689 E. Speedway Blvd.
Applicant: Dae S. So
City #054-03, located in Ward 6
Series #12 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| (9) | ECKERD DRUGS #5348
8705 E. Speedway Blvd.
Applicant: Michael W. Huffstutler
City #055-03, located in Ward 2
Series #10 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| * | WAG'S BEVERAGE EXPRESS
1800 E. Broadway Blvd. #136
Applicant: Donald L. Whitney
City #056-03, located in Ward 5
Series #10 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| (11) | QUICKSMART
1850 E. Prince Road
Applicant: Barry M. Bennett
City #057-03, located in Ward 3
Series #10 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |

Person Transfers

- | | |
|--|---|
| (12) MANDARIN GRILL RESTAURANT
505 E. Grant Road
Applicant: David M. Fung
City #041-03, located in Ward 3
Series #7 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| (13) SAUSAGE DELI
2334 N. 1 st Avenue
Applicant: Joseph P. Fanelli
City #042-03, located in Ward 3
Series #7 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| * (14) WINSOR DRIVE-IN LIQUORS
4000 E. 29 th Street
Applicant: Manuel C. Garcia
City #053-03, located in Ward 5
Series #9 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |

Location Transfer

- | | |
|---|---|
| (15) PETER PIPER PIZZA
4120 N. Oracle Road
Applicant: Donald R. Baxla
City #050-03, located in Ward 3
Series #7 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
|---|---|

Person/Location Transfer(s)

- | | |
|---|---|
| (16) WILDE PLAYHOUSE
135 E. Congress
Applicant: Joan O'Dwyer
City #033-03, located in Ward 6
Series #7
(Continued from the Mayor and Council Meeting of June 30, 2003) | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| (17) YOSHIMATSU HEALTHY
JAPANESE EATERY
2660 N. Campbell Avenue
Applicant: Yoshimi Tashima
City #043-03, located in Ward 3
Series #7 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| ** (18) THE BUZZ
345 W. Drachman
Applicant: Andrew A. Saenz
City #051-03, located in Ward 3
Series #7 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |

*Withdrawn by the applicant

**See page 21

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| <p>(19) FRY'S FOOD & DRUG #42
9401 E. 22nd Street
Applicant: Stephen M. McKinney
City #052-03, located in Ward 2
Series #9</p> | <p><u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance</p> |
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(c) Special Event(s)

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| <p>(1) COMITÉ DE FESTIVIDADES MEXICANAS
3700 S. La Cholla Blvd.
Applicant: Mercedes M. Guerrero
City #T049-03, located in Ward 1</p> | <p><u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Parks & Rec.: In Compliance</p> |
| <p>(2) PANTANO EXCHANGE CLUB
4440 S. Houghton Road
Applicant: Scott P. Little
City #T050-03, located in Ward 4
Date of Event: October 25, 2003</p> | <p><u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance</p> |
| <p>(3) STONE AVENUE TEMPLE PROJECT
dba HISTORIC STONE AVE. TEMPLE
949 E. 2nd Street
Arizona Historical Society
Applicant: Joshua M. Protas
City #T051-03, located in Ward 6</p> | <p><u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance</p> |
| <p>(4) KOKOPELLI WINERY
4th Avenue (534 & 536) North
Applicant: Donald L. Minchella
City #T053-03, located in Ward 6</p> | <p><u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance</p> |
| <p>(5) CHURCH OF ST. MICHAEL AND ALL ANGELS
602 N. Wilmot Road
Applicant: John R. Smith
City #T054-03, located in Ward 2</p> | <p><u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance</p> |
| <p>(6) ST. MELANY'S BYZANTINE CATHOLIC CHURCH
1212 N. Sahuara Avenue
Applicant: Stephen A. Mikitish
City #T055-03, located in Ward 6</p> | <p><u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance</p> |
| <p>(7) TUCSON BREAKFAST LIONS CLUB
4823 S. 6th Avenue
Applicant: Raymond J. McKee
City #T056-03, located in Ward 5</p> | <p><u>Staff Recommendation</u>
Police: In Compliance
DSD: In Compliance
Parks & Rec.: In Compliance</p> |

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| (8) | TUCSON BLUES SOCIETY INC.
900 S. Randolph Way
Demeester Performance Center
Applicant: Robert C. Del Grego
City #T057-03, located in Ward 6 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Parks & Rec.: In Compliance |
| (9) | TUCSON JEWISH COMMUNITY CENTER
3800 E. River Road
Applicant: Carolyn H. Amacher
City #T058-03, located in Ward 2 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (10) | SUN SOUNDS OF ARIZONA
3400 E. Camino Campestre
Hi-Corbett Field
Applicant: Mitzi M. Tharin
City #T059-03, located in Ward 5 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Parks & Rec.: In Compliance |
| (11) | RAYTHEON TUCSON MANAGEMENT CLUB, INC.
401 E. Limberlost, Las Candelas
Applicant: Matthew D. Neely
City #T061-03, located in Ward 3 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (12) | TUCSON MUSEUM OF ART
140 N. Main Avenue
Applicant: Charlie E. Bodden
City #T062-03, located in Ward 1 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (13) | TUCSON MUSEUM OF ART
140 N. Main Avenue
Applicant: Charlie E. Bodden
City #T063-03, located in Ward 1 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (14) | TUCSON MUSEUM OF ART
140 N. Main Avenue
Applicant: Charlie E. Bodden
City #T065-03, located in Ward 1 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |

Kathleen S. Detrick, city clerk, advised that the application for O'Shaughnessy's, city #038-03, had been withdrawn by the applicant, as had the application for Winsor Drive-In Liquors, city #053-03. The application for the Vinum, city #045-03, had been protested and should be considered separately.

Council Member Dunbar said she would like the application for the person/location transfer by The Buzz considered separately.

Council Member Leal asked that the application for Wag's Beverage Express be considered separately.

It was moved by Council Member Leal, seconded by Vice Mayor Scott, that liquor license applications for city #038-03, #044-03, #046-03, #047-03, #048-03, #049-03, #054-03, #055-03, #057-03, #041-03, #042-03, #050-03, #033-03, #043-03, #054-03, #T049-03, #T050-03, #T053-03, #T054-03, #T055-03, #T056-03, #T057-03, #T058-03, #T059-03, #T061-03, #T062-03, #T063-03, #T065-03 be forwarded to the department of liquor licenses and control with a recommendation for approval.

Mayor Walkup asked if there was any discussion.

Council Member Ronstadt said for the record that the application for Wilde Playhouse, city #033-03, was the liquor license on Congress Street that the council dealt with on June 30, 2003. In working with the applicant, Ms. O'Dwyer, and staff, it was discovered that there is a deed restriction that only allows arts uses at that property. In granting a liquor license, because of the deed restrictions, there would be no need for anyone to be concerned about the future potential for a bar. That was an issue on June 30, 2003. Saturation was also an issue. He thought there were 34 number six and seven licenses in the area resulting in more than 50% of the licenses within a half-mile radius being bar licenses. He wanted to make the record clear that the only reason he was recommending that the subject application be approved was the deed restriction that protects the property. Otherwise, based on the saturation in the downtown, in a half-mile radius, he would move for denial. He wanted to state that for the record.

The motion was declared carried by a voice vote of 7 to 0.

7. LIQUOR LICENSE APPLICATIONS

(b) New License(s)

(3)	VINUM 3840 E. Grant Road Applicant: Bessie J. Lietzau City #045-03, located in Ward 6 Series #4	<u>Staff Recommendation</u> Police: In Compliance DSD: In Compliance Bus. License: In Compliance
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Mayor Walkup said he wanted to be clear about the proceedings. In asking people to speak, he thought it was appropriate that the applicant be asked first. If the application had been protested, the protester could be asked to address the council and if the police had comments, they could come forward. He asked that all parties try to keep their comments in the three-minute time limit. He asked the council's pleasure.

Council Member Ronstadt said he was talking to Council Member Leal and did not hear the mayor's instructions. He asked if the applicant was present, which he was, and said he wanted to see if the protester was present and give them an opportunity to speak. Essentially, this application was for a wholesale license and it was his understanding that the applicant was bringing in specific types of wines, boutique wines, for private customers, and asked the applicant if there would be retail sales.

The applicant's representative said they do strictly business to business sales. They are a wholesale business, so there would be no public business, no retail, people could not pick up a bottle. The product would be delivered strictly to licensed resale business.

Council Member Ronstadt said essentially the license was for wholesale. He said in his opinion there were no grounds for the protest as applied to police, zoning, and the city's finance department.

It was moved by Council Member Ronstadt, seconded by Council Member Leal, and carried unanimously by a voice vote of 7 to 0, that liquor license application city #045-03 be forwarded to the state department of liquor licenses and control with a recommendation for approval.

7. LIQUOR LICENSE APPLICATIONS – (b)(10)

(b) New License(s)

(10)	WAG'S BEVERAGE EXPRESS 1800 E. Broadway Blvd., #136 Applicant: Donald L. Whitney City #056-03, located in Ward 5 Series #10 Action must be taken by: September 6, 2003	<u>Staff Recommendation</u> Police: In Compliance DSD: In Compliance Bus. License: In Compliance
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Council Member Leal asked the applicant to come forward.

Donald L. Whitney, applicant, said he was present to answer any questions.

Council Member Leal noted that a number of protests had been received, which he wanted the applicant to address.

Mr. Whitney said he spoke with Ms. Bugarin from the city clerk's office about 2:00 p.m., on Friday. She informed him that there were absolutely no letters of protests and everything was clean at that particular point. He was unaware of any letters of protest. He understood the cut-off date for submittals was August 3. He was curious when those protests were received.

Council Member Leal reiterated that the protests came in on Friday. He offered copies to Mr. Whitney. He added that he would have pulled this item in any case, just on the issue of convenience. Part of the justification for creating a new location is to create convenience in the area where there is currently an inconvenience. There are currently eight licenses within a half-mile radius. The area is already more than adequately served by establishments. For that reason, he would have pulled the item to make a separate recommendation on the application.

Mr. Whitney said as far as convenience was concerned, he intended to sell more than just beer and wine. He wanted to sell snacks, money orders, water, and juices, and have a soda fountain. He spoke with the Coca-Cola Company about that. There was also convenience and profitability for the consumer, because he was not constrained by corporate marketing and pricing issues. The subject location is a pretty good size, and half of the square footage was devoted to back room space. He would be able to buy in quantity and provide sale prices on an every day basis, which other businesses were not able to do. He was hoping to make up their profits through volume as opposed to just sales. He also felt that the location was ideal for a neighborhood type situation and he wanted to get involved with the neighborhood, such as catering to local businesses, as well as some drive-through traffic.

Mr. Whitney said he understood there were other liquor licenses in the area, however, he went to the license and control website and he pulled up four different zip codes. He found there were a total of 11 licenses within a mile, and only five actual liquor stores that did not intend on selling hard liquor, only beer and wine. So, there were only four establishments that sold beer and wine within a square mile. He personally drove the area and according to his odometer the first mile was to Country Club, north of Speedway, to First Avenue, back to 22nd, which is a huge area. He only found four beer and wine stores and six stores in the outlying areas that might be considered within the one-mile area.

Mr. Whitney said he felt they had a unique idea, that they were going to be the only operation in town to provide this service with non self-service alcoholic beverage, meaning that all or 90% of all of the packaged beer would be behind the counter. That meant that the employees, including himself, would be able to identify through normal channels, the age of the person, before they even touched the product. They could also ascertain the condition of the person through training. So he felt that they were going to be doing something that no other retailer in town was doing. The concerns about selling to an intoxicated person or someone who is underage, would be moot because they would not be able to get their hands on any products before they were identified.

As far as convenience goes, Mr. Whitney said he understood that there was a Safeway across the street and a Circle K not too far down. The other locations were quite a distance away, relative to where people normally shop. He felt they would be able to provide a service as far as the beer and wine, along with soda, water, and juices, at a reduced price, because of the lack of constraints on corporate marketing and pricing strategies. He felt with respect to the location and type of businesses in the area mall, and being a part of the neighborhood association and organizations, that his business would be to the convenience of the neighborhood. He wasn't going to seek far-reaching business, just neighborhood business.

Council Member Leal said he appreciated the full explanation and continued that while there may be only four licenses in the area that sell beer and wine, there are also other businesses that can sell more than just beer and wine. He also had to consider the protest from the neighborhood.

It was moved by Council Member Leal that liquor license city application #056-03 be forwarded to the state liquor board with a recommendation of denial.

Mr. Whitney understood there were other licenses in the area, but again, he reiterated that he thought it would be unfair to classify a beer and wine take-out store, with hotels, clubs, and restaurants. Even though those businesses hold a beer and wine license, or a license to be able to sell, it's always consumption on premise, or some other type of thing that is the issue. The subject business was only similar in the fact that alcohol was involved and not the type of business. He did not understand where the letters of protest came from and he would appreciate getting information on those letters.

Council Member Ibarra seconded the motion.

Mayor Walkup asked the council's pleasure.

Vice Mayor Scott suggested that the applicant be allowed some time to address the protests, since he was not aware of them. The city clerk had not seen the protests, nor had she.

Council Member Leal pointed out that he would have pulled the item irrespective of the protest just because of the convenience issue.

Mayor Walkup asked for a vote on the motion to forward a recommendation of denial to the state liquor board on liquor license city application #056-03.

The motion carried by a voice vote of 7 to 0.

Mr. Whitney asked for clarification of the motion.

Mayor Walkup explained that the motion was to forward a recommendation of denial to the state liquor board.

Kathleen S. Detrick, city clerk, noted that she had checked her file and she had not seen any protests. However, the two protests that Council Member Leal was referring to are addressed to the Tucson City Clerk's Office. One protest is dated July 27, from Richard E. Fimbres; the second one is dated August 1, from Irene Fimbres. Ms. Detrick said she would check her files to determine what had occurred.

7. LIQUOR LICENSE APPLICATIONS – (b)(18)

Person/Location Transfer(s)

(18)	THE BUZZ 345 W. Drachman Applicant: Andrew A. Saenz City #051-03, located in Ward 3 Series #7 Action must be taken by: August 9, 2003	<u>Staff Recommendation</u> Police: In Compliance DSD: In Compliance Bus. License: In Compliance
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Mayor Walkup called on Council Member Dunbar.

Council Member Dunbar asked if the applicant was present.

Frank Saenz, representing the applicant, said his son was away on business and would not be back until Wednesday. He had asked him to appear before the council on his behalf. Mr. Saenz said he and his son had discussed that he would like to establish a series #7 liquor license in a restaurant. In the near future, he would like to change the license to a restaurant license. Andrew Saenz started the process for a series #7 about four months ago. He met with the city departments in lieu of getting an approval and since then, he has complied with whatever he was requested to do. At this time, Mr. Saenz would like to go ahead with a series #7 liquor license in this location, and within the next few days, apply for a restaurant license. Mr. Saenz said he and his son spoke with the state liquor board and they were assured that he could start the process for a restaurant license Wednesday morning. One of the things his son wanted to do was continue the process, and in the near future get rid of the series #7 liquor license and only have a restaurant license at the subject location.

Council Member Dunbar pointed out that Mr. Saenz had held discussions with her office and was told to withdraw his series #7 request and wait until he applied for the series #12 restaurant license. She said she was going to move for denial of the series #7 liquor license request. There had been 2,600 calls for service within a three-block area of the subject location. If the council was to forward a recommendation of approval to the state liquor board of the series #7 liquor license, there was no guarantee that the applicant would pull it and replace it with a series #12. A series #7 would stay with the subject location indefinitely.

Council Member Dunbar reiterated that she had told Mr. Saenz that the council would not approve the series #7. He had a choice now of either pulling the series #7, or she would make a motion for denial.

Mr. Saenz appreciated Council Member Dunbar's comments. He assured the council that his family is committed to the city of Tucson. They have been in the city for many years. They were active in the community and have been involved in many community functions. They were not going to do anything to disparage their family name. They were going to do things aboveboard and legally within regulations. If he gave the council his word, and his son gave them his word, he would pull the series #7 liquor license, that is what they would do. It was not an issue of them wanting to open a different type establishment. They were not even looking at selling packaged goods or anything. They intended to provide beverages within the facility. He said upon applying for the application, the mayor and council would get a copy of it. That would be done Wednesday morning. There was no attempt to get in the back door. They were trying to make sure they stayed aboveboard.

Council Member Ibarra suggested that the item be continued until the council's first meeting in September, if in fact the applicant was going to request the new license on Wednesday. The council was not going to have another meeting until September, but the continuance would substantiate what Mr. Saenz said. He asked if that would be a problem.

Mr. Saenz replied that would not be a problem. The process for a series #12 license is about 105 days. That was one of the reasons they were applying for the series #7, in order to start the process. They would have to start a new process.

Council Member Ibarra asked if as of Wednesday, the applicant was going to ask for a series #12 instead of a series #7.

Mr. Saenz replied that was correct.

Council Member Dunbar asked one more time, very clearly, if Mr. Saenz would like to withdraw his application. If he proceeded with the series #7, she would move for denial. She did not know how much clearer she could be. She said when Mr. Saenz first applied, the location was a club, now it's a restaurant. She tried to contact Andrew Saenz on all the numbers he had left. All she got was a fax number and nobody answered. It had been impossible to get a hold of Andrew Saenz. She understood that in the past he had worked with New West, Gotham, and DV8.

Mr. Saenz said that was correct.

Council Member Dunbar continued that there had been 2,600 calls for service within a three-block area. She did not know what the council was going to do, but she was going to move for denial of the series #7. She gave Mr. Saenz the choice.

Mr. Saenz stated he would withdraw the application for a series #7 and resubmit for a restaurant license.

Ms. Detrick noted that withdrawals only come from the state, and are then submitted to the city from the state.

Michael House, city attorney, said he understood a withdrawal had to be filed with the state liquor department. It could not be withdrawn at the mayor and council meeting.

Mr. Saenz interjected that they would submit the withdrawal on Wednesday morning, at the same time they applied for the series #12.

Vice Mayor Scott asked if the item could be continued to another meeting.

Mr. House said the time limit for processing the application would expire on August 9.

Ms. Detrick suggested that the withdrawal be submitted with the state, and the council continue this particular liquor license to the evening agenda. The city could then get a copy of the withdrawal from the state.

Mr. Saenz noted that the only problem with that was that his son was out of town and he could not file the withdrawal. He said they would file the withdrawal Wednesday when he got back to town.

Mr. House recommended, under those circumstances, that the council move forward with a recommendation for denial. If the applicant withdrew the application, the issue would be moot.

Council Member Ibarra said he just wanted to make sure that moving forward with the denial would not adversely affect the applicant's ability for a restaurant license.

It was moved by Council Member Dunbar, seconded by Council Member Ronstadt, that liquor license city #051-03, be forwarded to the state liquor board with a recommendation for denial.

Mayor Walkup asked if there was further discussion.

Council Member Ronstadt said he thought this was the appropriate course of action. He alluded to the mistake he made with 8 TRAXX and the permit extension of Maloney's on Fourth Avenue. He said someone approached him with the best of intentions, but once the council approved the license, they had absolutely no control over the future of that location. He thought Council Member Dunbar was correct in stating the Saenz' brothers association with DV8. DV8 was just being closed down by the state liquor department because they had egregiously violated state liquor laws. The Saenz' brothers were also involved with the Downtown Events Center and Promotions at the time the council was bombarded with calls from TPD regarding its operation. Based on his experience and belief of the characters of those young men, he would not support a series #12.

Mayor Walkup called for the vote.

The motion was carried by a voice vote of 7 to 0.

10. APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES (taken out of order without objection).

Mayor Walkup announced city manager's communication number 433, dated August 8, 2003, would be received into and made a part of the record. He asked the council's pleasure.

It was moved by Vice Mayor Scott, seconded by Council Member Leal, and carried by a voice vote of 7 to 0, to appoint Jeff Blau and Lori Jones Woods to the Stormwater Advisory Committee.

Mayor Walkup asked if there were any personal appointments.

Vice Mayor Scott announced that it was her great pleasure to appoint Al Wiruth to the Board of Adjustment. Mr. Wiruth is a Rita Ranch resident and currently vice president of that association, and an employee of Raytheon for 19 years.

Vice Mayor Scott announced her personal appointment of Frank Salbego to the Greens Committee. Mr. Salbego is currently the president of the Eastside Neighborhood Association and an active and avid golfer and she thought he would bring a lot of expertise to that committee.

She announced that Thomas Curly had expressed intense interest in serving on the Minority and Women Business Enterprise Commission. He owned and managed Curly Haircuts at Kolb and Speedway and presently owned a downtown barbershop, a minority owned small business. Vice Mayor Scott said she was very impressed with his willingness to step forward.

Vice Mayor Scott announced her personal appointment of Ester Sharif to the Pima County/Tucson Women's Commission. Ms. Sharif has been very active in her community in social service areas, concentrating on women's and youth issues. She believed Ms. Sharif would bring a lot to that particular commission.

Vice Mayor Scott announced her personal appointment of Alan Lurie to the Planning Commission. Mr. Lurie has served the community extraordinarily well in his capacity as the executive vice president of the Southern Arizona Homebuilders Association. He was also a general in charge of Luke Air Force Base as well as Davis Monthan Air Force Base. He brings balance to the issues that would be coming before the planning commission. She was honored that he accepted her offer.

Vice Mayor Scott announced her personal appointment of Pam Beilke to the Solid Waste Committee. Ms. Beilke is the director of technical services for the Apache Nitrogen Products where she manages environmental safety programs, quality assurance and engineering. She worked as an environmental professional in Arizona for more than 20 years.

Mayor Walkup asked if there were any additional personal appointments.

Council Member Dunbar announced her personal appointment of former Councilman Michael Crawford to the Tucson Convention Center Commission. Mr. Crawford would replace Kate Calhoun.

Council Member West announced her personal appointment of Jennifer Lyons to the Community Development Advisory Committee.

Mayor Walkup asked if there were any additional appointments. There were none.

RECESS: 3:02 p.m.

Mayor Walkup announced that the council would stand at recess and reconvene in regular session at 6:30 p.m.

RECONVENE: 6:39 p.m.

Mayor Walkup called the meeting to order and upon roll call, those present and absent were:

Present:

José J. Ibarra	Council Member Ward 1
Carol W. West	Council Member Ward 2
Kathleen Dunbar	Council Member Ward 3
Shirley C. Scott	Vice Mayor Ward 4
Steve Leal	Council Member Ward 5
Fred Ronstadt	Council Member Ward 6
Robert E. Walkup	Mayor
Kathleen S. Detrick	City Clerk

Absent/Excused:

None

8. MAGISTRATES: APPOINTMENT OF CITY MAGISTRATE

Mayor Walkup announced that city manager's communication number 410, dated August 4, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9875 by number and title only.

Ordinance No. 9875

Relating to city magistrates; appointing a City Magistrate of the City of Tucson; fixing compensation and declaring an emergency.

Mayor Walkup asked the council's pleasure.

Vice Mayor Scott recommended that Lee Ann Roads be appointed city magistrate. She had been an attorney for 19 years and was endorsed by both the Republican and Democratic parties. She represented a balance that Vice Mayor Scott thought the city needed.

It was moved by Vice Mayor Scott, seconded by Council Member Ibarra, that Lee Ann Roads be appointed city magistrate.

Mayor Walkup asked if there was any discussion.

A substitute motion was made by Council Member West, seconded by Council Member Dunbar, to pass and adopt ordinance no. 9875, appointing Jeffrey Alan Klotz as city magistrate.

Mayor Walkup asked if there was any discussion. There was none. He asked for a roll call on the substitute motion.

Upon roll call, the results were:

Aye: Council Members West, Dunbar, and Ronstadt; and Mayor Walkup

Nay: Council Members Ibarra and Leal; Vice Mayor Scott

Absent/Excused: None

Ordinance no. 9875, appointing Jeffery Alan Klotz, was declared passed and adopted by a roll call vote of 4 to 3.

Mayor Walkup asked for a second roll call for the purposes of the emergency clause and that purpose only.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Ordinance no. 9875, appointing Jeffery Alan Klotz, was declared passed and adopted by a roll call vote of 7 to 0 with the emergency clause.

9. MAGISTRATES: APPOINTMENT OF SPECIAL CITY MAGISTRATE

Mayor Walkup announced that city manager's communication number 441, dated August 4, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9879 by number and title only.

Ordinance No. 9879

Relating to city magistrates; appointing Robert Wright Special City Magistrate to serve upon call by the Chief Executive Officer of the Court; fixing compensation and declaring an emergency.

It was moved by Council Member Dunbar, seconded by Vice Mayor Scott that ordinance no. 9879 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Ordinance no. 9879 was declared passed and adopted by a roll call vote of 7 to 0.

11. ELECTIONS: RECONSIDERATION OF CALLING A SPECIAL ELECTION ON NOVEMBER 4, 2003 RELATING TO A COMPREHENSIVE TRANSPORTATION PLAN

Mayor Walkup announced that city manager's communication number 452, dated August 4, 2003, would be received into and made a part of the record. He asked the council's pleasure.

It was moved by Council Member Leal, seconded by Council Member West, and carried unanimously by a voice vote of 7 to 0, to reconsider the mayor and council's action of June 30, 2003.

Mayor Walkup asked the city clerk to read resolution no. 19663 by number and title only.

Resolution No. 19663

Relating to elections; giving notice of the Mayor and Council's future intent to call a special election to be held in the City of Tucson, Arizona on November 4, 2003 for the purpose of submitting to the City's qualified electors a proposed amendment to the Tucson Charter Chapter IV, Section 2; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

Council Member Dunbar noted that the city clerk had certified Initiative Petition 2002-I001 as having sufficient signatures to require referral for inclusion on the November 4, 2003 ballot. The companion Initiative Petition 2002-I003 would require a full count by the county recorder to determine whether there were sufficient signatures to require its inclusion on the November ballot. The two petitions were tied together and there was a need in the community for certainty about whether the issues would be on the ballot.

It was moved by Council Member Dunbar, seconded by Council Member Ronstadt, that the proposal set forth in Petition 2002-I003 be placed on the November 4, 2003 ballot.

Council Member Dunbar clarified that her motion was intended solely for the purpose of allowing initiation of appropriate community debate and was not intended as an endorsement of the substantive provision of the initiative.

Mayor Walkup asked if there was any discussion.

Vice Mayor Scott said she was sympathetic to the issue. She understood it very clearly having lived in a community where the public transportation system was integrated and effective. However, she compared it to the city holding a golf tournament and offering a new car to the person that got a hole-in-one in a particular hole. She asked if it would be fair to give a person the car if they just came close. Several people have said no, in order to get the car a person had to meet the terms. She said that was why she was voting no on the motion.

Mayor Walkup asked if there was any further discussion.

Council Member Leal asked if the people who had initiated the petitions had any comments on the motion or any other issues they would like to bring up.

Mayor Walkup said the city clerk wished to make a clarification.

Kathleen S. Detrick, city clerk, said she wanted to clarify that Council Member Dunbar's motion was to pass and adopt resolution no. 19663 with the additional information that she indicated. Ms. Detrick also wanted to point out that section three of the resolution read, "This resolution shall become null and void if subsequent to the adoption of this resolution the proposed ballot measure contained in Initiative Petition 2002-I003 qualifies for the ballot through the city's initiative process." She said the subject resolution would stay in effect only if it was determined that there were insufficient signatures on the petition.

James Keene, city manager, said he understood that the resolution was worded that way and framed that way not so much as a matter of choice, but to meet the requirements of the law.

Ms. Detrick said yes, the initiative process had started and must be carried through to the end, which required that she proceed with the full count regardless of the action the mayor and council took at this meeting.

Mayor Walkup acknowledged and asked if there was any further discussion.

Vice Mayor Scott asked if there were not sufficient signatures, what would happen as a result of the full count.

Ms. Detrick said if the mayor and council approved the proposed resolution, the petition would go on the ballot as a mayor and council referral, as Council Member Dunbar clarified that the two proposed petitions can be on the ballot together since they go together.

Council Member Leal said it was clear that some time had gone into drafting and thinking about the motion. He noted that the city clerk said the council's motion would stay in effect even if it was shy the required number of signatures and that was the only reason it would stay on. He asked what would happen if someone else challenged the petitions in court on some arcane technicality.

Ms. Detrick said that was something she could not address. If the city goes to court, a judge would make that determination.

Council Member Leal said if the motion the council made was broader than just a signature then it would stay on the ballot even if someone challenged it on a technicality.

Ms. Detrick agreed.

Brad Detrick, deputy city attorney, said the council's process was referring the measure, so if there were lawsuits attempting to say that there were not sufficient signatures for one reason or another, it would be irrelevant and the referral would stay in place. The council's action puts the measure on and if, in fact, they then have sufficient numbers, that would supercede it in that eventually. If it does not, the measure stays on and the passage of the two would still be together.

Council Member Leal called on Clague Van Slyke.

Clague Van Slyke, said he was one of the founders of The Citizens for a Sensible Transportation Solution. Since June 30 there had been a tremendous amount of interest in a comprehensive transportation initiative. He thought the council would agree that the outpouring of public support since its meeting on June 30 had been tremendous. He thought they had vaulted to the number one issue in the city of Tucson in the last month. The people of the city were looking at what would happen at this meeting. They were also looking forward to November to have an opportunity to vote on what they would like to do with the city's transportation future. At this point, since they filed their initial batch of petitions, the Citizens for a Sensible Transportation Solution filed an additional 3,500 signatures, bringing the total to 18,000 on each petition. That was a tremendous number, more than voted for the city's transportation plan at the last election. It was more than the number of people who participated in the city's polling process for that transportation plan. It was more people who have stepped up to say yes, they favor this choice, they favored this solution for the future. He said at this point they were 160 signatures shy of reaching the 105th percentile requirement to avoid the unnecessary and costly hand count that was beginning to take place. He said that did not need to occur. They had almost 1,000 signatures on petitions in the city clerk's office. The signatures were subject to litigation and a hearing would be held this week in front of a judge to talk about that issue. His research, his co-counsel's research, lead to the inescapable conclusion that there was no justifiable basis to keep those signatures hostage.

After the last election, when members of the mayor and council went before the community to survey the people's attitudes about that plan, the response they heard was that people had lost trust in their elected government. If the process was forwarded at this point because 160 signatures were being held up in a batch of 1,000 signatures, that would be 16% of those signatures if valid registered voters were keeping the initiative off the ballot and requiring an unnecessary hand count.

Mr. Van Slyke said the law was extremely clear that the group could correct the deficiencies in those petitions and that was all they have asked for in the last three weeks. They would proceed with the litigation to see if they could get the certification to avoid the hand count because they felt that was an unnecessary waste of time, talent, and money. As the Supreme Court stated in 1983 on this very same issue, "Once the petitioners signature verification reaches the 95th to 105th range we believe the basic presumption of validity should attach. If the time pressures are such that the county recorder cannot verify every signature before the date the election ballots must reach the printers, all doubts as to the validity should be resolved in favor of sustaining the signatures. The initiative should be placed on the ballot." He said that was what the Arizona Supreme Court said. He wanted there to be no doubt that the Citizens for a Sensible Transportation Solution had not provided the required signatures. They were well over the required signatures. At this point the city's position had been the most restrictive about letting them qualify the signatures that they had already obtained and he would try to resolve that issue this week. He appreciated the motion, he appreciated the voice of support for going forward, but he did not want there to be any doubt that this was not the will of the people, or that his group was receiving some special benefit that no one else was being granted. He said they would pursue the matter in court, the council had an attorney, they could seek his advice. Mr. Van Slyke could tell the council that they had agreed that his group could rehabilitate the petitions that were in question. He had proposed two extremely simple, direct solutions. They filed with the city attorney's office a verification from the person who passed the petitions that should be sufficient to allow the city clerk to reconsider 800 signatures. That would resolve the issue and they would have their certification.

Mayor Walkup asked if anyone else wished to address the council.

F. Ann Rodriguez, Pima County Recorder, said she was present in her official capacity as the responsible party that had to verify all of the petitions. She had some concerns about the dual process that was taking place. There was a petition process, then there was an act saying that if they fall short it does not make any difference, the council will go ahead and do it anyway. She said it is extremely unfortunate that the decision was not made before this time, but that is the way it was. By statute she could charge the city of Tucson 50 cents per signature. In reality it costs the county \$1.25 to process each signature on the petitions. It was a very tedious and laborious task, it was not that her staff was not used to doing it, but it was very labor intense. She was asked if they could expedite the process and she told them if the city of Tucson wanted to pay for overtime they could maybe consider it, but she did not have the overtime budget in her particular funding. She was party to the lawsuit although she had not been officially served and the first court hearing was scheduled for this Friday. As she had stated, she was ready to show the plaintiffs the signatures that they were questioning, that the county threw out for various reasons, interpretation, does the signature match and so forth. Her point of concern was when there is a dual system going on it provides a potential for litigation by a third party yet unknown. It was the message that was sent, the cost to the taxpayers, and if that was what the council was going to do, she wished they had done it sooner and all of this unnecessary confusion could have been avoided. She would wait for the council's decision to find out what she had to do. She was on record saying that she did not think the process could be stopped; she did not think the council had that authority. Once the signature checking process had begun, they to complete it. The only time she had been given an order from the secretary of state to stop something was

when they had done a statewide initiative and she was asked how many valid signatures she had. Once that magic number was met across the state, that was when she got the order that it was okay to stop.

Mayor Walkup asked staff to respond.

Dennis McLaughlin, principal assistant city attorney, in response to Mr. Van Slyke's comments, said the city had not been served with the lawsuit, which in effect meant the city was not yet in a lawsuit and staff was aware of the Friday hearing. However, the main point he wanted to make was that staff felt that the signatures that the city clerk was rejecting were rejected for very good reasons. In fact, staff felt that the law required that they be rejected and if the clerk had not rejected them she would be subject to a potential mandamus action by opponents asking why she had not. It is the nature of the law that she had to reject the statutes and if there was going to be a reinstatement, the proper forum for that was the court. It was not up to staff to suddenly reinstate signatures that the statutes said need to go out. If there needed to be a lawsuit, there needed to be a lawsuit. That was the appropriate forum if there was going to be a reinstatement.

Council Member Leal asked Mr. McLaughlin to address the case Mr. Van Slyke referred to in 1983 that talked about 95% to 105%.

Mr. McLaughlin said he believed that was the Save Our Public Lands case with Judge Stover and what that case said was if a petition hit the 105 percentile it was not necessary to continue counting. He said he may have misunderstood what Mr. Van Slyke said, but the basic point was that they had not hit 105% based on the situation. It was a statutory situation where a full count had to be done and nothing that he was aware of in that case was in anyway relevant to what the clerk had to do, which was to get rid of signatures that were not properly notarized, or that were attempted to be notarized by a notary who was not a notary, according to the secretary of state. In either case, the city did not have any statutory discretion. The signatures had to be eliminated.

Mayor Walkup asked if the counting process was going to be started on all of the petitions that had been submitted that were not discarded until the magic number of 12,777 is reached.

Michael House, city attorney, said that was correct.

Mayor Walkup asked if in the process there was a court ruling that said previous invalid signatures were valid, would those signatures be put back into the pot.

Mr. House said yes.

Mayor Walkup asked if that would be done in a timely enough fashion that they would at least make the effort of the 100% count. He said it sounded as though that could happen as early as Friday, and he was not sure where staff was in the counting process. Was it still ongoing and would that be a timely inclusion of the count?

Mr. McLaughlin said the proceeding on Friday was nothing but a status conference. It was what the court sets up when they initially get the case. The answer to the mayor's question was yes, it could be done on an accelerated basis, but it probably

would not happen Friday. Staff would need to probably do stipulated facts and end up with summary judgement motions on either side. Who wins was a pure question of law. They say they won, the city says it won. Consistent with an accelerated appellate process it could be done fairly quickly, but there inevitably would be delays. Once the 105 was hit, if that was what the decision did, he believed the clerk would then be free to stop counting.

Mayor Walkup said he understood that and the worst possible situation was that the counting was going along and it looked like they would fall short and a bunch of ballot signatures that will be returned at some future point. It would be nice if everything happened by the time the count was going on. He asked if the clerk was doing the 105% counting.

Ms. Detrick said the county recorder is responsible for the voter registration.

Mayor Walkup said he thought everybody on the council wanted this to happen in an orderly and expeditious fashion because they wanted to see the initiative process work. His only charge was that if there was any kind of delay and the count process was still proceeding that staff do everything they could, if there were any, to get them put into the pile.

Mr. Detrick said he thought the process was designed to be expedited with the random sample and staff believed the county recorder had proceeded appropriately and the clerk had followed the rules. They may have some instances where, again, it was like a burden shifting because on their faces, they were invalid and they may be able to rehabilitate those. They were trying to focus on a number that should be very rapidly determined and may quickly put an end to this. He thought that was their intent. He did not have a problem with that, he was simply saying the clerk could not unilaterally make that determination. It required a judge to take the evidence and accept it. Everyone wants an expedited process and to follow the statutory procedure.

Council Member Ibarra said there were two parts to this. One part had already been taken care of and that was the plan itself, now they were talking about the funding mechanism. If the funding mechanism did not have sufficient signatures, the mayor and council would vote and if it passed, put it on themselves, protecting it from a potential challenge. He said the first part of it, the plan itself, was put on by signatures and asked if that could be challenged by a third party for lack of signatures. He asked if the signatures could be challenged.

Mr. McLaughlin said yes, hypothetically it could be challenged by a third party.

Council Member Ibarra said then the plan could actually be taken off, but the funding mechanism could be kept on the ballot and the voters would be voting on only the funding mechanism.

Mr. McLaughlin said that was potentially true, but if there was going to be a challenge of that nature, the clock was essentially running on that, and there were going to be problems if it could not be completed prior to the start of early voting. So, anybody who wanted to challenge that plan was going to need to get on their horse.

Mayor Walkup said he would allow one more speaker, but the council had to move forward.

Joy Herr-Cardillo, Citizens for a Sensible Transportation Solution, said she just wanted to clarify a couple of comments Mr. McLaughlin had made. First of all, they intentionally withheld service because they were hopeful that with the second influx of petitions, this litigation would be unnecessary. She did fax a courtesy copy to Mr. McLaughlin last week, she also contacted the county attorney. She already had a copy of the complaint, so they had not just been sitting, not taking any action. They did not want to start time deadlines running unnecessarily. Secondly, she wanted to clarify what the Arizona Supreme Court said in 1983. It was not that at 105 a petition was automatically on the ballot. What they identified was precisely this situation. When the random sample resulted in a finding that a petition was somewhere the 95% and 105 percentile, in that middle range, what the Arizona Supreme Court said was that it was at that point that the verification, the presumption of validity attaches. There was now a presumption of validity on the petitions. They were not asking for somebody to call it close, they were at 103.6 % and according to the Arizona Supreme Court they were presumed valid and all decisions should go in favor of putting the petitions on the ballot. The law is very clear in Arizona.

Mayor Walkup asked for a roll call on the motion to pass and adopt resolution no. 19663.

Before voting, Mayor Walkup said he thought everyone on the council was anxious to get this issue in front of the voters. He thought it was a very important issue. It was a matter of being fair and honest and that the voters have a chance to consider both the plan and the funding source. He could say that it would be unusual for one of them to get on the ballot and he thought the council had done the right thing in taking the covering action. He thought they were very hopeful that in the count, one way or another, this was an initiative process. He said there had been some people who thought the council's vote was an endorsement of the plan and said he could not endorse the light rail plan. He thought light rail was in the future sometime, but he believed that this was not the right time from an affordability standpoint. He believed they had a chance to put in a form of light rail with Rio Nuevo that would not include any new citywide taxes. He thought the people who spoke to him said that they wanted a region-wide plan and this did not provide for a region-wide plan, it was citywide only. He said his vote does not and should not indicate an endorsement of the plan, but he thought getting the issue in front of the voters was precisely the right thing to do and he encouraged all Tucsonans to understand the plan and to vote and speak from the heart.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
and Mayor Walkup

Nay: Vice Mayor Scott

Absent/Excused: None

Resolution no. 19663 was declared passed and adopted by a roll call vote of 7 to 0.

12. ZONING: (C9-03-12) DIBRO DEVELOPMENT – THORNYDALE ROAD, O-3, MU, AND I-2 TO C-1 AND C-2

Mayor Walkup announced that city manager's communication number 424, dated August 24, 2003, would be received into and made a part of the record. He also announced that this was a request to rezone property located on the west side of Thornydale Road, south of Orange Grove Road. The zoning examiner and the city manager recommend approval subject to certain conditions. He asked if the applicant or a representative were present and if so, were they aware of and amenable to the proposed standard conditions.

Jack Neubeck, The Planning Center, for the owner, Rodrigo Diaz Brown, said they were in agreement with the terms and conditions set forth by the manager's office.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member West and carried unanimously by a voice vote of 7 to 0 to pass zoning case C9-03-12.

Council Member Ibarra thanked The Planning Center, Mr. Neubeck, and Mr. Diaz Brown for working with his office, and putting a lot of effort into it. They did a good job and it was a good plan.

13. ZONING: (C9-03-11) DAVERN – SILVERBELL ROAD, SR TO R-1

Mayor Walkup announced that city manager's communication number 429, dated August 4, 2003, would be received into and made a part of the record. He also announced that this was a request to rezone property located on the west side of Silverbell Road north of Ironwood Hill Drive. The zoning examiner and the city manager recommend approval subject to certain conditions. He asked if the applicant or a representative was present.

Forrest Metz, Urban Engineering, said he would answer any questions the council had.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member West, that the council accept, endorse and pass zoning case C9-03-11.

Mayor Walkup asked if there was any discussion.

Michael House, city attorney, said the motion should be to approve the request for rezoning as recommended by the zoning examiner.

It was moved by Council Member Ibarra, seconded by Council Member West, and carried unanimously by a voice vote of 7 to 0 that in zoning case C9-03-11, staff be directed to prepare an ordinance rezoning the subject property from SR to R-1, as recommended by the zoning examiner, subject to the standard conditions recommended by the city manager.

12. ZONING: (C9-03-12) DIBRO DEVELOPMENT – THORNYDALE ROAD, O-3, MU, AND I-2 TO C-1 AND C-2 (additional action)

Michael House, city attorney, advised that the motion in this case should be to approve the request for rezoning as recommended by the zoning examiner.

It was moved by Council Member Ibarra, seconded by Council Member West, that in zoning case C9-03-12, staff be directed to prepare an ordinance rezoning the subject property from O-3, MU, and I-2 to C-1 and C-2, as recommended by the zoning examiner, subject to the standard conditions recommended by the city manager.

Mayor Walkup asked if this was a new motion, same motion or what.

Mr. House advised that it was additional language.

The motion carried unanimously by a voice vote of 7 to 0.

14. ZONING (C9-03-04) CUMMINGS – MARTIN AVENUE, R-2 TO P, CITY MANAGER'S REPORT

Mayor Walkup announced that city manager's communication number 430, dated August 4, 2003, would be received into and made a part of the record. He also announced that this was a request to rezone property located on the east side of Martin Avenue, south of 6th Street and west of Campbell Avenue. The zoning examiner and city manager recommended approval subject to certain standard conditions. He asked if the applicant was present.

Scott Cummings, said he concurred with the zoning examiner's finding and agreed to the terms and conditions set forth.

It was moved by Council Member Ronstadt, seconded by Council Member Leal, and carried by a voice vote of 7 to 0, that in zoning case C9-03-04 staff be directed to prepare an ordinance rezoning the subject property from R-2 to P, as recommended by the zoning examiner, subject to certain standard conditions recommended by the city manager.

15. ZONING: (C9-03-08) KALAMAZOO MATERIALS – STONE AVENUE, R-2 TO O-2, CITY MANAGER'S REPORT

Mayor Walkup announced that city manager's communication number 407, dated August 4, 2003, would be received into and made a part of the record. He also announced that this was a request to rezone property located on the east side of Stone Avenue north of Pastime Road. The zoning examiner and the city manager recommend approval subject to certain standard conditions. He asked if the applicant was present and if so, were they aware of and amenable to the proposed standard conditions.

Linda Morales, The Planning Center, said they were.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Dunbar, seconded by Council Member Ibarra, and carried unanimously by a voice vote of 7 to 0 that in zoning case C9-03-08, staff be directed to prepare an ordinance rezoning the subject property from R-2 to O-2, as recommended by the zoning examiner, subject to the standard conditions recommended by the city manager.

16. ZONING: (C9-00-17) ROBERTS – WRIGHTSTOWN ROAD, SR TO RX-2, ORDINANCE ADOPTION

Mayor Walkup announced that city manager's communication number 448, dated August 4, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9882 by number and title only.

Ordinance No. 9882

Relating to zoning: amending zoning district boundaries in the area located on the northside of Wrightstown Road 2025 feet east of Pantano Road in Case C9-00-17, Roberts – Wrightstown Road, SR to RX-2; and setting an effective date.

Kathleen S. Detrick, city clerk, noted that passage of the proposed ordinance required a three-fourths vote of the council, which would be six affirmative votes.

Michael House, city attorney, added that since the approval required six affirmative votes, a motion to approve would fail if six votes were not obtained.

Mayor Walkup asked the council's pleasure.

Council Member West said this case had received a considerable number of protests and only a couple of them were withdrawn. One big property owner had withdrawn their request. She said the concern had to do with traffic and the dangers on Wrightstown Road. She noted that the subject property was located on a traffic corridor that needed to be studied. When she first moved to the location there were very few developments, now the entire corridor was developed. She shared the neighbors' concern, however, the applicant had been asked to install a deceleration lane and a left-turn lane to address some of the concerns. She walked through the neighborhood and explained that she would be voting for the request, so her vote should not come as a surprise to anyone, but there were no offers to rescind the protests.

It was moved by Council Member West, seconded by Council Member Dunbar, that ordinance no. 9882 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Ordinance no. 9882 was declared passed and adopted by a roll call vote of 7 to 0.

17. ZONING: (C9-98-25) STARR PASS AND MOUSSA – STARR PASS BOULEVARD, R-1 TO SR, ORDINANCE ADOPTION

Mayor Walkup announced that city manager's communication number 447, dated August 4, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9881 by number and title only.

Ordinance No. 9881

Relating to zoning: amending zoning district boundaries in the area located northwest of the intersection of Starr Pass Boulevard and Players Club Drive and west of Starr Pass Boulevard 300 feet south of Players Club Drive for the golf course portion of Case C9-98-25, Starr Pass and Moussa – Starr Pass Boulevard, R-1 to SR; and setting an effective date.

Mayor Walkup asked the council's pleasure.

Council Member Ibarra said before making a motion of support, which he thought all of his colleagues would support, some clarification needed to be made because of some confusion about the request. He asked staff to clarify what the property was currently rezoned and what it was being rezoned to so everyone would be clear.

Ernie Duarte, development services director, said the proposed ordinance would change only the zoning from R-1 to SR to allow for the further development of the golf course tied to the Starr Pass and Marriott Resort. It did not involve any of the property that was previously authorized for the time-share casitas, that proposal would be coming before the council in September. He reiterated that the subject rezoning was not tied to the time-share or the casitas and said the number of protests that were contained in the mayor and council materials were the protests that were part of the original zoning authorization, so they remained. He reiterated that those protests were primarily for the time-share casitas.

Council Member Ibarra reiterated that the subject request downzoned the property to a golf course and asked if that was correct.

A representative responded that that was correct. The zoning was for SR and open space.

It was moved by Council Member Ibarra, seconded by Vice Mayor Scott, to pass and adopted ordinance no. 9881 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Council Member West asked if the subject property was being watered with reclaimed water and she was advised that it was.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Ordinance no. 9881 was declared passed and adopted by a roll call vote of 7 to 0.

18. PUBLIC HEARING: (SE-03-03) AVENTIS BIO SERVICES – 12th STREET SPECIAL EXCEPTION LAND USE

Mayor Walkup announced that this was the time and place legally advertised for a public hearing for a special exception land use, which would begin after a brief presentation by staff.

Peter Gavin, zoning examiner, advised that this was a special exception land use request for a plasma center on the northeast corner of 12th Street and Euclid Avenue. He said the request was a relocation of the plasma center that is currently located on the south side of 6th Street, just east of Park Avenue. It is a 10,000-square foot plasma center on approximately one acre of land. The proposal complies with the performance criteria in the code and with the *Arroyo Chico Area Plan*. That concluded his presentation.

Mayor Walkup asked if the applicant or a representative was present to make a brief comment.

Keri Silvyn, Lewis and Roca, representing Aventis Bio Services, which was negotiating a lease with Bourn Partners to locate a plasma center on the southeast corner of Broadway and Euclid, said a representative of Bourn Partners was present, as was Mary Beth Savel from Lewis and Roca. Ms. Silvyn said the subject property was zoned I-1, and a plasma center was an allowed use in I-1 subject to the special exception land use process and specific zoning criteria, all of which Aventis meets. Nonetheless, she was requesting a continuance for two reasons. First, Aventis Bio Services was in negotiations for a buy out merger and they expected to be much further along in their negotiations at this point and anticipated the deal would be resolved in the next couple of months, but no later than this year. Aventis would prefer to postpone the entitlement of the subject property until the corporate issues have been resolved. Second, some of the council members' offices had some concerns and questions related to the purpose of the relocation and the use. A continuance would give Aventis an opportunity to provide some additional information, do more homework and address those questions. She asked that this request be continued to the December 1, 2003 meeting. If the council chose to take action on this request, she asked that she have an opportunity to speak substantively on the case.

Mayor Walkup asked Council Member Leal to comment.

Council Member Leal said Ms. Silvyn had met with his staff, and they had met with a number of residents in the subject area. He had particular concerns about having the plasma center moved to the subject location and given what he knew he did not support the request. He was willing to honor the applicant's request and continue the item until December, which would give the applicant time to do the two things she noted.

It was moved by Council Member Leal, seconded by Council Member Ronstadt, to continue this item to a meeting in December.

Kathleen S. Detrick, city clerk, said this item had been noticed as a public hearing, the council could allow anyone in the audience who wished to speak and if there was no one, they could close the hearing and continue the action or they could continue the public hearing.

Mayor Walkup asked if anyone in the audience wished to speak. He said speakers would be limited to five-minute presentations and the hearing was scheduled to last for no more than one hour.

Garry Brav, South Euclid Partners, L.L.C., said he owned the property directly across the street from the subject location at Euclid and 12th Street, the northwest corner. He had been committed to the neighborhood for more than 20 years. He was at 340 S. Euclid for ten years until the state bought the property as part of the Aviation Corridor, which was when he bought the property at 140 S. Euclid and redeveloped it for his office. He had been there for 11 years. Recently, he had redeveloped 1101 E. Broadway, the former location of the Grand Falloon Saloon, and a flea market, which he redeveloped to Health South. El Rio is also there. He had spent a lot of money in the neighborhood. Recently, he bought the Standard Brands building and redeveloped it into a top class office building. It had not been leased yet, but the building had been on the market for more than three years and there were some issues in the neighborhood, which was one of the reasons why the proposal to move the plasma center concerned him. The biggest concern was that in all of the applications the applicant has made in the past they had specifically offered and included a security guard arrangement where they would hire a security guard to control any population they serve on the exterior of their building. That was conspicuously absent from the application that was submitted to the mayor and council for final approval. It was in the application for the planning commission meeting, it was there after the planning commission meeting, but somehow it had disappeared from the application presented to the council for this meeting.

Mr. Brav said properties in the area are subject to some abuse from some of the population that was in the neighborhood because of the Aviation Corridor connection. He still liked the neighborhood, was committed to it, but what he did not want was to be surrounded by the injection of an additional population that was a potential problem. To give an idea, he said a landscape company would not continue servicing his business until he cut back all vegetation because of people using the space behind the plants for a public latrine. That had been a problem. People slept on his property and it was a constant police effort to take care of. He did not want to become the enforcement vehicle that made sure Aventis incorporates a security system into their facility in terms of a guard. When Mr. Brav got his permit for the rehabilitation of the Standard Brands building, he had to submit to the city a lease guaranteeing additional parking spaces to

meet the code requirement for city approval. He wanted some mechanisms that said the applicant had five years to comply with all of the zoning requirements and he was not sure if that meant five years to comply to get a permit to build or five years to comply once the facility had moved. He would like to see the council add some teeth to the request to make sure Aventis operates the business they say they are going to operate.

Council Member Leal said there was an argument that a security guard would have benefit on site, but many of the clientele were not necessarily in vehicles. They come to the facility as the crow flies, from different directions. The added security would only be for a small radius on the subject property and would not create security on Mr. Brav's property or any of the adjacent properties. On one hand, Council Member Leal was heartened by it, but in the end he was not sure what it would achieve on Mr. Brav's property and other properties like his.

Mr. Brav said he did not disagree, but if the request was going to be approved, if he could not stop it, then the request for a security guard was his position. He would rather stop it if he could, but if he could not, he would live with it. It was free enterprise, it was business, but he wanted to minimize any impact it might have on the neighborhood.

Council Member Leal said the council appreciated what Mr. Brav and others had done in that corridor. It had been a significant reinvestment and it was a gateway into the downtown. He thought the city would be thoughtful about nipping in the bud the kind of evolution that had been going on in the subject area.

Mayor Walkup said he thought the council would have a chance over the next several months to talk about a lot of the issues. He asked if anyone else wished to address the council. There was no one.

Mayor Walkup said he thought the council had two choices, either close the public hearing or continue it.

Council Member Leal said he had made a motion.

Ms. Detrick said the motion was premature since the item had been noticed as a hearing.

Council Member Leal asked if he should make the motion again.

Ms. Silyvn asked for clarification of the date. She had asked for December 1, 2003, but that was an afternoon meeting, so she would ask for a continuance to December 8, 2003, which was a night meeting.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Leal that this item be continued to the first meeting in December.

Ms. Detrick asked if he was moving to continue the public hearing and the action on this item.

Council Member Leal said yes, that was correct.

Ms. Detrick asked if he was continuing the item to December 8, 2003.

Mayor Walkup said that was correct.

The motion was seconded by Council Member Ronstadt.

Mayor Walkup asked if there was any further discussion. There was none.

The motion to continue the public hearing in case SE-03-03, to the meeting of December 8, 2003 as requested by the applicant, was carried unanimously by a voice vote of 7 to 0.

19. PUBLIC HEARING: ZONING (C9-91-19) LEWIS – TANQUE VERDE ROAD, C-2 ZONING, CHANGE OF CONDITIONS AND ORDINANCE ADOPTION

Mayor Walkup announced that city manager's communication number 449, dated August 4, 2003, would be received into and made a part of the record. He also announced that this was the time and place for a public hearing with respect to a change of conditions and preliminary development plan for the property located at the southwest corner of Desert Arbors Drive and Desert Links Drive. He asked if the applicant or a representative was present.

Phillip Pepper, Pepper Viner Companies, said they were in agreement with the 20 items listed by staff as conditions for the requested change of use. However, they would like further consideration on one of the items. He displayed a rendering of the 48-unit subdivision of single-family homes and said it would eventually be bordered by some commercial use. The developer had agreed that it would be a gated community with private roads. It was originally 50 lots, but they had reduced it by two lots in order to accommodate one of the important conditions of the change of use and that was a recreational activity area. They were being asked in condition number six to create two pedestrian access ways at the end of the cul-de-sac, he thought, to create better access to what may eventually be developed to the south. He pointed out that when a gated community is created it creates what is referred to by the *Sabino Canyon/Tanque Verde Neighborhood Plan* as a defensible space concept, or trying to adhere to that. The development does have pedestrian methodology through the gated area. They have sidewalks planned all around the area and they are concerned that by creating two more points of access that they would have significantly weaken the gated community concept.

He believed that the people who live in some of the homes find it most convenient, but the access way and the way the development had complete and easy access along one of the roads and to the sidewalks that would be along it to the commercial property to the south was more than sufficient access to that area. They also had no idea at this point what that development would be. It could be a number of different things, so he asked that there be further consideration for the developer to be able to create the pedestrian access as it was currently designed without having the imposition of two additional pedestrian access ways. He said they would have to be gated somehow, so there would be the constant propping open, holding open and breaking down of these systems, which again, weakens the concept of a gated community.

Ernie Duarte, development services director, said staff appreciated Mr. Pepper's agreement with the conditions, but they have not had an opportunity to flesh out the discussions relative to those access points, which staff was asking for when they were looking at changing the conditions of the rezoning. He said he would like to have an opportunity to sit down with Mr. Pepper to flesh out those details and bring the case back perhaps at the council's first meeting in September.

Council Member Leal asked if the subject development was a gated community figuratively or literally.

Mr. Duarte said because the streets are private, it is a gated community. They are literally gated streets.

Mr. Pepper asked if there was a suggestion that the balance of the conditions were being accepted at this meeting and only one condition was being tabled. He asked if that was the intent.

Mr. Duarte said typically, all conditions are taken as being related to one case.

Mayor Walkup asked for clarification.

James Keene, city manager, said it was his understanding that typically, the way land use issues work was that staff and applicant work through the process and the issues and bring a recommendation to the council. Sometimes they were in agreement and sometimes they were not, but the idea was for both the applicant and staff to know exactly what they were dealing with as it came in. He understood that staff was saying Mr. Pepper was asking for changes in the conditions that they were unaware of and were not in a position to be able to make the appropriate staff recommendation. His recommendation was that the point that Mr. Pepper brought up be taken off the table and the conditions be accepted as proposed. The council could then proceed, or the case be continued to its next meeting so that staff has the opportunity to do due diligence so that they do not put the council in an awkward position of having to make a decision without a staff recommendation. He thought that would set a bad precedent.

Mayor Walkup asked if there was any discussion.

Council Member West said she was going to embarrass Mr. Pepper a little bit. He had done so many innovative designs in her ward and she was extremely proud of him for stepping out there so many times and doing an exceptional job. She knew this case was not going to any different and asked if he was going to do anything like he did at Dos Hombres.

Mr. Pepper said there would be some similar designs.

Council Member West said the garages were more unobtrusive and so forth and that development was a class act. She asked about the retention/detention. She noted that was being treated as more of an amenity, which she knew Vice Mayor Scott, Council Member Dunbar and she were very interested in. She asked if that was a part of the recreation area.

Mr. Pepper said yes, the central area that was developed where they gave up two of the lots to create the detention/retention basin would in fact be an activity and recreation area.

Council Member West said after the public hearing it might be good to continue this item in order to work out the pedestrian access points. She asked it could be continued to the first meeting in September.

Mr. Duarte said that would give staff time to review the issues.

Mayor Walkup announced that the public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations. He asked if anyone wished to address the mayor and council. There was no one.

It was moved by Council Member West, seconded by Vice Mayor Scott, and carried unanimously by a voice vote of 7 to 0, to close the public hearing.

It was moved by Council Member West, seconded by Vice Mayor Scott, and carried unanimously by a voice vote of 7 to 0, that zoning case C9-91-19 be continued the September 2, 2003, mayor and council meeting in order for staff to consider the pedestrian access points.

20. PUBLIC HEARING: ZONING (C9-84-25) KIVEL - KOLB ROAD, O-3 AND C-1 ZONING, CHANGE OF CONDITIONS AND ORDINANCE ADOPTION

Mayor Walkup announced that city manager's communication number 445, dated August 4, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing with respect for a change of conditions and preliminary development plan for the property located on the southwest side of Kolb Road, north and south of Calle La Paz. He asked if the applicant was present.

Linda Morales, The Planning Center, said the subject property was zoned in the 1980s and had an approved development plan for a commercial retail center and office use. The plans were for a strip mall retail type center on the northern part of the site and a three-story office building on the southern portion, south of Calle La Paz. The developer is proposing a modification of the original plan to develop a luxury apartment complex on the majority of the site as well as an office building along Kolb, next to the new office complex that was recently constructed. They believed the subject change would be a positive change from the previous plan and should have less of an impact on the surrounding residents because the proposed community is an upscale community with a target market ranging from young professionals to retirees. The rents and the character of the proposed community would cater more to established, stable types of renters and should be compatible with the existing Dorado Country Club as well as The Meadows, which is the neighborhood directly to the west. The developer wants to give special attention to landscaping, the design of the building, and the ground architecture all the way around the development so that no one is staring at the back of the building. They want to limit the buildings to no more than two stories. The previous proposal called for three stories right up along the Dorado Country Club and they had actually limited that to two stories, no more than 25 feet high. The proposed community

would have only the lighting that is necessary for safety. A retail center would have quite a bit more lighting and more spillover onto the adjacent neighbors. The overall noise level of the proposed project should be considerably less with a residential and office community rather than a retail center that has trucks with backup beepers coming and going at all hours of the day and night.

Ms. Morales said since the beginning of the project last January they started a dialogue with The Meadows Homeowners Association, which is the group directly to the west and shared some of the proposed development's streets. Joe Banchy is the one they started talking to in the beginning. The association had its annual meeting in March, which was fortunate for the developer because they were able to present the plan at that meeting, which they did and they got positive feedback from the community at that time. Since that initial meeting they had met with Mr. Banchy five or six times and had several telephone conversations with him. In July, they received a letter from Mr. Banchy stating his primary concerns, which were generally about traffic, the intersection of Calle La Paz and Kolb, as well as Camino Serna, which is the road directly to the west, between The Meadows Neighborhood and the proposed development. As a result of a meeting with Council Member West, one of the solutions they came up with was speed humps. The developer agreed to pay for three speed humps along Camino Serna. She believed she forwarded the language for that condition to Mr. Duarte and she had copies for anyone else who needed them. She was surprised to receive another letter from Mr. Banchy this morning with two pages of concerns, many of which were, and he said so in his letter, concerns that he and Ms. Morales had gone over in the past. He wanted the comfort of having some of those concerns addressed in writing. She prepared a memorandum to him this date restating some of the commitments that the developer had made to the community in response to some of his concerns. She sent the memorandum to Mr. Banchy, as well as to Mr. Duarte and the city manager's office, and followed that with a telephone discussion.

She and the developer had also been in discussions with Bill Katzel who had some concerns about traffic as well. She thought he wanted a traffic signal at Calle La Paz, and while the developer shared his concerns, wanting a safe community with good access, their traffic study had not shown that a signal is warranted. Furthermore, it would be too close to the intersection of Tanque Verde and Kolb to be safe, according to traffic engineers. In anticipation of the traffic concerns, they prepared at the time of their application a full traffic impact report. Michael Schmit (ph) of Kimley Horn was present to answer any transportation and traffic related questions as was the developer, Roger Carver. Ms. Morales said they were aware of and amenable to the proposed conditions and would be happy to answer questions.

Mayor Walkup advised that the public hearing was scheduled to last no more than one hour and speakers would be limited to five minutes or less. He had received a number of requests from people who wanted to speak and he would call on those people in the order received.

Bill Katzel, read a prepared statement that he had provided copies of to the council and registered with the city clerk. "He and his wife own property at 6601 E. Calle La Paz, unit C, in a development of 347 families known as The Meadows. They purchased the unit in 1977 for occupancy by his mother. Upon her death in January 1984, his son and his family occupied the unit. Since his son's divorce the unit

had been continuously occupied by responsible tenants and is so occupied to date. Because of federal tax laws, he and his wife will have to occupy the unit in the near future as their primary residence for a minimum of two years in order to avoid substantial capital gain penalties upon sale. The council could see by their property history that they have had and continue to have an active community interest in what goes on in The Meadows and surrounding area.

The zoning issue before the council affected not only him and his wife, but also 346 other families. To date these families have had user-friendly ingress and egress via Kolb Road/Calle La Paz. Through continuous development of the surrounding area and expediential increases in traffic, the effective ingress/egress via Tanque Verde/Camino Serna has been substantially closed. This left the current ingress/egress via Kolb Road/Calle La Paz as the only user-friendly ingress and egress for 347 families of The Meadows. The zoning issue before the council will affect both sides of the Calle La Paz and Kolb Road intersection. The council's actions will either continue to guarantee user-friendly ingress and egress via Kolb Road/Calle La Paz, or substantially restrict the comings and goings of 347 families."

As a stipulation for approval of this zoning, he asked the council to mandate appropriate additional conditions that would guarantee continued user-friendly ingress and egress for the 347 families of The Meadows. To do otherwise would invite adversarial legal action by affected residents, a poor performance rating under the AIMS Test, and a possible future candidacy by one or more residents of The Meadows for the ward two council office. The city manager's recommendation and staff materials do not address these concerns. He hoped the council would do the right thing for the residents of The Meadows and for the developer.

Mr. Katzel said he met with Linda Morales earlier in the day and he had studied this case since 1989, thanks to the city clerk retrieving the materials from the archives. He had looked at associated zonings in the surrounding area whose conditions had been broken that have adversely affected the development. He had also talked to James Glock, director of transportation, and Vince Catalano, the chief engineer. They did not want to install an acceleration lane, they did not want to put in a traffic light and they do not want to stripe Calle La Paz for left and right turns, so what was left. The proposal is for a 16-unit apartment complex, shopping center and office, and blocking the ingress/egress. He said that was four times the density just in the number of units on one-fourth the land, so it was an expediential increase of 14 times the development that currently existed.

Linda Callewaert, said her house faced the proposed development. Her front yard is the area where it would be built and she was concerned about the traffic. The area is currently open with grass, kids play basketball, and people walk their dogs there. The proposed number of apartments seemed to be extreme. She was concerned about how to exit her home safely. Tanque Verde was not safe at five o'clock. She goes out Kolb and she would not be able to do that from what she was hearing. The proposal changes the whole traffic flow.

Her father lives on Pantano and Speedway, the whole area was built up, he lived on Second Street, and he could not get out. He still cannot get out of that area. Her other concern was the density with that many apartments. If they are on top of each other there

would be no view; people would not be able to see anything. Would the developer build a big fence, were they changing the whole scheme of The Meadows, which is grass, trees, openness, animals, and birds? It has been that way for many, many years. She asked if there was going to be a sidewalk around the development. People have always walked through it to go to the stores, or would there be something on the outside so that neighborhood residents can walk around. It had been a very open area, but she was concerned about traffic flowing through there when her grandson is out playing ball. She asked if she was supposed to keep him in the back where she cannot see him. Children play in that area. They do not travel too often to the back, they play where they live, on the grass where it is safe, and parents can see where they are. She was concerned because her grandson is hearing impaired. When he was riding the school bus from the School for the Deaf and Blind, numerous cars ran the stop. It was like the bus and the stop sign were not there, like they did not exist. Her grandson is still in special education classes and has to be transported. How many cars are going to fly through the area and hit her grandson. Because of his age, according to school policies he has to walk across the street. The bus used to pull up right in front and he did not have to cross the street. There are other kids, however, who are dropped off there, kids in special schools with special handicaps. The whole density of the area would change if the proposed project is approved.

She questioned that the development was going to be upscale apartments and said she would not live in an upscale apartment that has 300 plus people crammed into it. She did not understand it and said the noise level would increase. She works at night so it would affect her; it would affect her daughter and her grandson. When they talked about upscale, she did not hear a real number of upscale people. Did they really mean upscale or did they mean upper middle class people who are on the go? Just because a person is a 25 to 30 year old professional did not mean they were an upscale spending \$40,000 and \$50,000 on a home. Her townhouse had increased since 1995 when she bought it from \$40,000 to \$80,000 and was going up each month. The council was not looking at that. They were looking at money in taxes and dollars, not in a friendly fashion of people who have lived there for years.

John Edwards, said he was new to the community. He had been in Tucson just over two years. He moved from New York City where people were piled upon each other. Here he was enjoying the peace and ambiance of the community, only to hear that this was what was going to be taking place. Obviously, there were concerns about traffic and with the traffic, the residents knew what was going to happen with respect to crime. Those were serious concerns and they had to be taken into consideration. The other speakers stated the kind of concerns that all of them feel will happen.

Norman Adams, said his biggest concern was traffic. He thought the city had just done a study on the most dangerous signal in Tucson and he thought it was at Tanque Verde. There were more accidents there and they were deadly accidents. People cannot turn onto Tanque Verde in the morning to go to work, southeast, it did not matter. They have to go south on Kolb to be safe. He said anyone who had ever tried to turn onto Kolb Road, going south at night on Calle La Paz with a flow of traffic behind them, knows it is dangerous. He never turns there. It is dangerous so he comes north and takes Calle La Paz because there is a turning lane. He asked if the council had looked into what would happen to the existing residents' property values.

He asked why the subject property was not made into a park. It was going to be apartments and he asked if the city did a study on how many apartments were vacant in the area. Some apartments are offering three months free rent, free deposits, and not even doing credit checks because there are so many high vacancies in the area.

Now the council wants to allow the development of 300 multi-family homes. How many more thousands of cars are going to be put in an area that is getting 36,000 cars a day. He could not believe the council would allow that to happen. He was furious that the council would allow more apartment complexes in an area that has a vacancy rate of more than 40%. More apartment complexes when apartment complexes can be put on a dump. The council approved that and he could not believe they allowed apartments to be developed right at Pantano and Speedway on top of a city dump where he goes all the time to dump stuff. It is a private dump and the city allowed 900 multi-family units there. In this case, they are going to put in 300 multi-family units and they said there was only 150. It was ridiculous with the current vacancy rate that they were going to put more apartments. It meant more taxes. He said it did not make any sense and it was going to be dangerous, very, very dangerous and the city council would be held accountable for whatever happens to his area. If his property values drop, he would sue the city.

Joe Banchy, said he had been the managing agent for the association for the past seven years and it has been quite a lot of fun. He had come before the mayor and council on numerous occasions. He thought they might remember him. He had always voted for their raises, but he did not know if they always got them. After careful consideration of everything that had been said at this meeting he was sure the council would vote not just their conscience, but their hearts as well, because the residents' hearts were in the subject area. Before he was managing agent he was on the board of directors for three years. So for over ten years he had been actively involved in the community. Other than that, he had lived in the neighborhood for 18 years. People asked why he had lived there for so long. He said he had raised two daughters there and he thought it was a great community. He submitted a diagram to show the council what originally was in the minds of the planners when the neighborhood was laid out. It showed what The Meadows was originally laid out to be. He thought it was a great community and he could say, as could many others who know The Meadows that the undeveloped lots of the Monte Catalina Estates would be completed as shown on his diagram. One could easily see how closely The Meadows and Alta Vista Community were related. Be that as it may, a close review of the Alta Vista Project suggested from the city's perspective that the subject proposal was a viable project. Given the considerations that had been discussed with Roger Carver, principal developer, specifically in relation to traffic, Mr. Banchy thought it was going to be a traffic nightmare. Mr. Catalano of traffic engineering had addressed those issues as best he could and in a letter that Ms. Morales sent today, which he hoped the council had copies of, the developer was willing to provide certain stipulations to address the traffic at this point. However, how could the residents know what would be addressed in two years if the project does develop into a nightmare once it is completed. Along Camino Serna the developer agreed to speed humps, and Council Member West said they would get speed humps apart from the subject development more than 11 months ago. Mr. Carver was willing to pay for the speed humps and that would, he hoped, slow down a lot of the cars and cut-through traffic that the neighborhood was experiencing and may experience in the future. On Calle La Paz the clear marking of that intersection onto Kolb to show separate and distinct left turn and right turn existing off of Calle La Paz onto Kolb should

be addressed. In the letter that was sent today it was given consideration in the event the city agreed. He did not know if the city would agree from listening to Mr. Katzel's comments and asked for clarification.

On the northeast portion of the subject property on Kolb, there was supposed to be a crash wall. Mr. Banchy heard two or three different scenarios, so he was not entirely clear, but what Mr. Catalano had suggested was that right turn access only off of that property could occur off of Kolb and probably should occur. That would alleviate some of the traffic going onto Calle La Paz. He thought height should be given serious consideration in that it was limited to 25 feet and the buildings should not extend over those boundaries. He was not just talking about the two-story apartment building; it should apply to the offices as well. That would mimic what was in place at the Caylor property, which has a limit of 25 feet. The developer said he would be willing to, the last Mr. Banchy heard, go to 29 feet, but Mr. Banchy thought he might be willing to go to 25 feet. He was awaiting a response on that at this meeting. The developer also said that there should only be two story in the office complex, not three story as indicated in the council's report, so that is limited as well. He noted his time was up and asked for additional time.

Mayor Walkup said the council needed to move on and asked Mr. Banchy to conclude.

Mr. Banchy again asked for additional time, noting that the council had allotted one hour for this hearing and asked how much time had elapsed.

Mayor Walkup said that is not how the council conducts hearings and asked if anyone else wished to address the council. Seeing no one, he allowed Mr. Banchy three more minutes.

Mr. Banchy continued that in addition to the design considerations, paragraph two in the last section on page two of five, indicated that a new rezoning condition was needed to ensure the access of the off-site residential is maintained. He said that was a comment he thought was made by the city manager, which he would like him to expound on. Finally, in conversations with Mr. Carver earlier this evening, he stated that he was a nice guy and Mr. Banchy liked that. Mr. Carver also stated that he possessed certain skills and experience in relation to multi-family housing issues and committed his pledge of support to strengthening the community so that they have a strong and united relationship. However, he was not specific on how his pledge of support would be acknowledged. In a nutshell, Mr. Banchy said his overall opinion of this development was that there were many more overall units than were originally planned, he thought a total of 500 more plus the 30,000-square feet in office buildings. It was true that this is higher a density type development and could possibly detract from the overall ambience The Meadows had enjoyed for the past 25 years. The block walls remove the contiguous relationship of their property flows, which are open and very unique as a community lay out and Council Member West agreed with that.

Mr. Banchy hoped the city attorney would explain the document that referred to an emergency in relationship to the passage of this project. He was not sure what the emergency was and asked that the city attorney expand on it. It pointed out five specific sections, the last being the statement about the emergency. He wanted to know what the

emergency was. He said the letter submitted by Ms. Morales to the homeowners' association should be made a part of the minutes, as should the reference to the 30 feet for the office building being reduced to 25 feet as not to detract from the overall height of the surrounding developments.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member West, seconded by Council Member Ronstadt, and carried unanimously by a voice vote of 7 to 0, to close the public hearing.

Council Member West asked Mr. Duarte what the council was being asked to do on this particular case.

Mr. Duarte, development services director, said staff was recommending approval of the requested change of conditions. A host of new conditions were added to this particular case from the original. Given the number of questions Mr. Banchy, Mr. Katzel, Mr. Edwards, and Mr. Adams had raised, he thought it might be appropriate to continue this item in order to address some of the concerns.

Council Member West said she wanted to make a few comments on the record that might not make her very popular. She had tried several times to call the president of The Meadows Neighborhood Association and finally got him on Friday. She was pleased to see some residents at this meeting and she would have liked to have time to meet with them before this, but she did not know whom to call. It had been very, very difficult for her office because the only person that they ever saw was Mr. Banchy, who is a management person. He lives in the neighborhood, but it was always important to Council Member West to talk to the officers of the board and she was not afforded that opportunity. In addition, she wanted to say something about the speed humps and the back to basics program.

Last fall, she asked Mr. Banchy to submit a petition for the speed humps, to get the required signatures of 60% of the property owners. Seven months later she got the petition, at a time when the back to basics fund had been cut, so Mr. Carver had very graciously stepped in and said he would be willing to put them in. She said there had been numerous meetings with Mr. Banchy and the applicant. Many of the questions about the traffic she agreed with, it was a good idea, but she would like to see more of the residents involved. The subject property is vacant and had been rezoned for some time. It had been nice to have it for the time that it had been there, but the fact is that the land does not belong to the mayor and council, it belongs to someone else. The council was being asked at this meeting to make some changes to the conditions of a rezoning that already exists.

It was moved by Council Member West, seconded by Council Member Ibarra, and carried by a voice vote of 7 to 0, to continue this item to September 2, 2003, so the questions that were brought up at this meeting could be addressed by the homeowner, the neighborhood association board, and the developer.

Council Member West said she would be glad to attend the meetings.

21. PUBLIC HEARING: PROPOSED AMENDMENT TO THE SAM HUGHES NEIGHBORHOOD PLAN TO ALLOW A MIXED-USE DEVELOPMENT ON THE SOUTHEAST CORNER OF CAMPBELL AND SIXTH STREET

Mayor Walkup announced that city manager's communication number 450, dated August 4, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for an amendment to the *Sam Hughes Neighborhood Plan*, to allow a mixed-use development on the southeast corner of Campbell and Sixth Street. Before beginning the public hearing, he asked for the staff report.

Albert Elias, comprehensive planning task force director, said this was a request for an amendment to the *Sam Hughes Neighborhood Plan* to allow a mixed-use office/ commercial/ retail development on the southeast corner of Campbell and Sixth Street. This request was considered by the planning commission at a study session as well as at two public hearings. Much of their discussion revolved around the policies in the *General Plan* and the *University Area Plan*, as well as the *Sam Hughes Neighborhood Plan*. Staff believed that the policies in the *General Plan* and the *University Area Plan* support this kind of mixed-use development on the amendment site, based on the site's proximity to an activity center at the University of Arizona, its location at the intersection of two major streets and the mix of medium density residential and non-residential use around the site. Staff also believed that compatibility could be achieved in the proposed development with the use of height and use restrictions as well as the specific design of the project itself. The city manager recommended that the mayor and council direct staff to approve the subject plan amendment and also look at amending and identifying potential revisions to the plan amendment itself at some point in the future, once mayor and council approves any subsequent rezoning case.

Mr. Elias said there had been a substantial amount of interaction between the applicant, the neighborhood association, and other interested stakeholders during this process and he thought a number of substantive issues had been discussed in great detail.

Mayor Walkup asked if the applicant or a representative was present and wished to comment.

Frank Bangs, representing the applicant, La Colonia Seis, owner of the subject property at the southeast corner of Sixth and Campbell, and Raul Reyes, the architect of the project, were present. Mr. Bangs said the wording of the proposed amendment was acceptable to the applicant. In addition, as Mr. Elias indicated, there was a recommendation from both the association and the planning commission that council direct staff, following the completion of the rezoning, to revisit the plan amendment and see if it can be further narrowed and tailored to the subject site and development. He said they supported that action by the council.

In the interest of speeding the proceedings further he wanted to make a quick comment on the companion item, number 22, a real estate exchange agreement. That agreement provides the terms under which the city will vacate the mid-block alleys and Seventh Street in exchange for the dedication of additional right-of-way for Campbell and Sixth Street, and the developer's promise to include a bike park at the intersection of

Norris and Seventh Street. He said the wording of that agreement was acceptable to the applicant and its approval in connection with the plan amendment was critical to give his client the comfort that they can go forward with the rezoning process and accept the considerable expense in that process on an accelerated schedule.

Mr. Bangs noted that Mr. Elias alluded to the process that had been occurring over the past six months and said from the applicant's point of view they bought a piece of property over a year ago, they intended to develop an apartment complex on it under the existing zoning. There were objections to that proposal from the Sam Hughes Neighborhood Association and from residents in the neighborhood. He supposed the story could have ended there, as many of them do that the council is familiar with, as one of those intractable neighbor/developer disputes, but something different happened in this instance. The leader of the Sam Hughes Neighborhood Association and the city challenged the developer to do something different, to do more than they had planned to do with this site, a more intense mixed-use project that would require the proposed plan amendment, rezoning, and entirely new building plans. La Colonia Seis accepted that challenge on three conditions, one, the proposal had to have the support of the neighborhood association; two, it had to benefit the community; and three, it had to be financially feasible for them. Since then, the path had occasionally been bumpy, they had a few detours, and they still had a way to go, but they were present at this meeting with a proposal that met the three criteria. The excess is due in large measure, he believed, to an unprecedented, at least in his experience, level of commitment, hard work, and willingness to compromise by everyone involved, the neighborhood association, residents, city staff, and his client.

In conclusion, he asked the council to approve the proposed plan amendment and the exchange agreement under item 22. He and Mr. Reyes would be happy to answer any questions about the proposal and he wanted to reserve a few minutes in the event there were any questions at the end of the public hearing that needed to be addressed.

Mayor Walkup announced that the public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations. He had received a number of written requests from people wishing to speak and said if speakers could make their presentations in less than five minutes everyone would appreciate it.

Paul Mackey, said he wanted to speak on two fronts. He supported the concept of the plan as shown in attachment C of the council's material because it represented a major change from where the case started. As many of the council members were aware and as Mr. Bangs pointed out, the original proposal consisted of a large number of four bedroom apartments that would have been primarily oriented toward student housing, and as the council is aware that is a volatile issue in the area. Following a reaction against, that a larger proposal came in for up to 96 units with commercial. That in turn saw its own reaction in opposition. What was before the council at this meeting was a middle ground of sorts where there is a residential complex to the east and south on the site, and a commercial property on the northwest corner. That, through a number of meetings including one of close to 300 people, seemed to be acceptable to most of the people in the neighborhood.

However, where he would depart from the recommendation of staff and what the applicant was proposing was the question of why did the entire site need to be changed

in the plan. The neighborhood plan allows for uses of this type although it does not specifically refer to them as mixed-use and so there is no major objection to the mixed-use, per se, but there is objection to changing the entire site in the plan and calling it mixed-use. The question was why was that important. The position of the staff and city manager who showed up at some of the meetings was that the residents should not worry about the plan, everything would be worked out in the rezoning and therein lies the major issue. If the entire site is approved at this meeting as a mixed-use site, it would set the stage for a major rezoning. The applicant and city staff at this point were willing to go along with the rezoning category of OCR-1, which was a new category and the second most intensive in the city, the only one more intense is OCR-2. This could allow all sorts of things to happen.

The position of the staff and city manager is that a lot of conditions would be applied, so that it would not be that much of a problem, but it is a problem. It is a problem in the whole university area and it is a problem on the subject site in particular. It is a huge site, approximately 144,000 square feet. The applicant was talking about 60 condominiums and approximately 16,000-square feet of retail space. The trade-off with the neighborhood is that in return for student apartments, there would be condominiums and supposedly, they would not have students. That was the major trade-off.

Mr. Mackey said he was talking about the plan, but in a way, he was really talking about the next step the zoning that would follow. If a rezoning took place to the high category of OCR-1 for an entire block of the area, he would argue that it was entirely inappropriate and that it set a dangerous precedent for the entire university area. The original proposal by staff called for changing the *University Area Plan* at all of the four corners of the intersection. That was subsequently changed as a result of objections. Other neighborhoods besides Sam Hughes had objected to the major change that would result in the proposed high zoning category. He suggested, as he had urged before the planning commission, that the concept be supported. It was valid, however, in looking at it there was no reason why the entire site had to be changed. He argued that approximately one-third of the site in the northwest portion is sufficient to carry that out. That one-third could actually be zoned for mixed-use development and there probably would be no major objection to it, but to change and rezone the entire site to one of the highest categories was a bad way to go. It would create tremendous pressures in the area; it made it difficult for subsequent development to resist changes and pressures of that type. He thought all of the council was aware of the housing situation in the university area and at its last meeting in June, it set a number of things in motion, particularly for the Jefferson Park Neighborhood in recognition of that. He thought Council Member Ibarra even asked for a memorandum, off the agenda, to study it. Mr. Mackey said they had been calling for the university, appeared before the regents to talk about student housing, they had asked city staff to make changes and set something in motion. That was the situation that needed to be addressed.

His recommendation was that the council approve the plan amendment, but restrict it to one-third of the site. He was raising issues at this meeting because he expected to be back when the rezoning was proposed with specific objections and he wanted the council to keep it in mind for that subsequent discussion.

Mary Zulli, president of the Sam Hughes Neighborhood Association, said about a year ago she and her neighbors learned that an entire city

block in their neighborhood was about to be developed as student housing. The council could imagine their reaction. They had numerous meetings at Council Member Ronstadt's office with city staff and attempted to meet with Mr. Horvath. With some work they were able to convince Mr. Horvath that the plan was not acceptable. They found all kinds of objections and tried to find ways through covenants, conditions and restrictions to make it acceptable, but it could not be done. They asked him to consider something completely different and when he talked to them about what kinds of things were available for development on the subject property, they looked around to see what they were. What they found were strip malls, parking lots, chain stores, lots of drive-through and fast food businesses and decided that that sort of plan was not going to be acceptable to them as an historic neighborhood. They wanted something that was completely different, only it was actually not completely different. They would like to think of it as being innovative, but in fact they were really following the kinds of development that occurred in Tucson in the years between 1910 and World War II, before the car became so important to people. What they wanted was some kind of pedestrian-friendly area. One where the stores would be welcoming, right at the sidewalk and would allow them to find a place to gather as they currently do at Rincon Market. One that would send people off to their jobs at the university and beyond and serve as a kind of focus for that portion of the neighborhood.

The subject location had been unloved for quite a long time and the kinds of tattering that occurs in that kind of area is evident. Ms. Zulli said they really needed to take the area in hand and throw away the rules, unfortunately the zoning is there, and start from scratch. The mixed-use concept is relatively new to Tucson and most of the zoning laws are inadequate to deal with anything like the subject area. She said they had urged city staff to deal with that, to make more zoning laws for them, but in the meantime, they had to live with what was there.

Ms. Zulli said what they would like to do is separate the issue into two completely separate processes, as the city had already started to do, those being the neighborhood plan change and the rezoning. As Mr. Mackey stated, he would be back before the council at the rezoning and they would expect to have the council taking a very close look at the rezoning and make sure that the neighborhood gets what it needs in that process. However, at this point, especially with the resources of a volunteer organization like the neighborhood association, they do not have the means to go over the incredibly fine points of zoning to determine exactly what it ought to look like without even having firm plans.

She asked the council to take the plan as a compromise in the neighborhood between those people who wanted something very massive that would protect them both physically, visually, and psychologically from the university and from the 60,000 cars that rush by there everyday, and would really serve as a kind of human buffer and allow the neighborhood to really grow out to its edges and be productive out to that point. Later, when there is an actual plan they could deal with all of the issues that the remaining neighborhood residents had. She said the association's vote in favor of the plan was 7 to 0, a victory that any candidate in an election would relish. The remaining people would have issues of course and they would like to answer them, but they need to be answered at the rezoning, when all of the plans are much more concrete and they had an idea of what is going on. The people who were most in favor of the very large development, the four-story development, were those people who live immediately adjacent to the property.

They wanted that protection because currently their view is the backend of the Arizona Stadium and the proposed development would be far superior to that. It was very important to them that the subject property be addressed. It was currently a dust heap and it needed to be developed and cleaned up so that those residents do not have to live with the noise from the intersection.

She urged the council to expedite the process and vote in favor of the proposed amendment. They would be supporting a process that she thought was probably unprecedented in the city in terms of cooperation between city staff, the developer, and the neighborhood to come up with a project that is completely compatible with the neighborhood and forward looking to the future of Tucson. The next step in the process would be the rezoning and she hoped the neighborhood had the council's support in examining the situation and making sure that the neighborhood was satisfied with the results.

Mel Cohen, which is catty-corner to the subject property, said he supported the plan amendment, but he was concerned that when the project came back to the council that they would be open to the issues of height limitation, setback, and traffic. He said in this case, there was a very astute developer who understood the property was coming on the market, but the neighborhood was not made aware that the development was going to happen. He thought one of the roles of the city and the neighborhood association would have been to let the residents know that there was this big piece of property. Maybe they could have asked the city to build a park or all of the neighbors who did not want the development could have bought the property. He suggested that there should be a learning curve. He did not know how many large parcels were going to come up again, but he thought the appropriate role was to make neighbors aware of potential, significant changes so that some of the problems that occurred could be avoided. He wanted the council to be aware that they needed to deal with the fine points that had not been dealt with appropriately. He asked the council to support the plan, but hoped they would learn from the problems that happened in his neighborhood so they would not be repeated in other neighborhoods.

Ash Silverburg, said he and his wife had lived at this address for the last 42 years and his hair was not gray when this proceeding began last year. A number of proposals had been made and considered, the developer had been most accommodating in working with the neighborhood and they felt that the subject proposal was one they could live with. It was very interesting that the objections to any development tended to increase exponentially the farther away the residents lived. The people who lived within a half a block, after looking at all of the proposals, seemed to feel that this was probably the one they were most comfortable with.

Suzanne Bott, representing the Sonoran Institute, said she wanted to reiterate some comments she made at the planning commission's meeting earlier in this process. The institute supported the proposed project for a number of reasons. She believed that being a mixed-use development the proposal provided a good transition in uses between the more intensive commercial development on Broadway, as well as farther to the south, and the less intensive residential uses in the Sam Hughes area. She also felt that the process had been a good process. It had involved a great deal of participation by the neighborhood and would continue to be an iterative process, so it would come back to the planning commission and to the council. Through each step of

that process, they would be able to ensure that it was being done well and appropriately. She felt that the developer had worked to a higher standard. As the council knew, with the principals of building from the best of Tucson, the goal was to look at the latest and innovative technology in resource sustainability and a variety of features that could be used to make it a real showcase development. She was concerned that the subject location was one of four corners and what was going to be done on it would set the standard for development on two other corners that were vacant. The intersection is a gateway into the university and those people who are familiar with other towns that have major universities are aware that in many cases university boundaries are noted and denoted at intersections by significant development that stated a person was entering a very special area. She believed it was incumbent on the development to set the standard for future development on those other corners as well as to make the intersection one that was safe for pedestrians. It should have some form of traffic calming because that intersection is extremely intensive, the traffic was quite high, so if the development was going to be pedestrian oriented the traffic calming needed to be very carefully considered. Finally, she asked that pedestrian safety and accessibility issues be carefully considered.

Jody Gibbs, in the university area neighborhoods, said he was primarily concerned because the proposed development set a precedent for the university area neighborhoods that he thought was negative. The university area neighborhoods boundaries is Stone to Country Club and Broadway to Grant. He displayed a map, pointing out the subject property and said the council needed to be aware that the University of Arizona Foundation owned most of the block to the north and to the south and the university was on record saying they would not expand beyond those boundaries. He believed the unintentional results of the subject project were enormous. Zoning the entire area OCR-1 was the result that he thought would follow if the council approved the project. The principal problem in the neighborhood was that the University of Arizona provided essentially less than ten percent of their students with housing and they are now a very large university.

The area to the south of the university is about 90% renters and the Rincon Heights Neighborhood was on record as totally opposing this project and the design. The Sam Hughes Neighborhood and to the north and west are all more than 50% renters. He thought the project needed to be quantified a little bit and said the typical block north, south, east, and west of the university, not just Sam Hughes had about 20 houses per block. The subject development proposed 65 houses per block, which is a 325% increase. The typical block on all four sides of the university had 40 cars; the subject project proposes 200 cars per block, which was a 400% increase. The typical building height on all four sides of the university neighborhoods was 15 feet, the subject project was at 46 feet, which is slightly more than a 300% increase. All four sides of the university were characterized as being green neighborhoods, meaning that they are essentially landscaped; only 16% of the ground was covered and had trees and plants. The subject project was about 65% covered and from their rendering was about 33% asphalt. The neighborhoods on all four sides of the university are masonry bungalow houses characteristic of the best construction. A previous speaker talked about the best of Tucson and the subject project was being proposed as frame stucco, wood frame and stucco. The commercial was being proposed in steel frame and stucco. It was not what was considered the best of Tucson in construction.

Mr. Gibbs said he wanted to point out some things the council might not realize. Tempe, Arizona about 30 years ago looked like the University of Arizona district. They had chosen also to go to very high densities around the university and it was now national chain stores on the ground floor and high rise office buildings above. The neighborhoods are gone; the traffic problems are horrendous, as are the sewer problems. Often people say they do not want Tucson to go the route of Phoenix. People need to look at Tempe because that was what the proposed project does. As Mr. Mackey said, there was absolutely no reason to make the entire block OCR-1. The residents have never gotten an explanation from the university as to what they were doing owning the land to the north and to the south. For the citizens of Tucson who may not be aware of it, the largest business in the city is the University of Arizona. He believed the subject project would further the impression that a developer only needs to spend two million dollars on a site, hire Lewis and Roca and present four plans, all of which were atrocious. Not a single plan the developer had done complies with the standards of the neighborhood plan or the *University Area Neighborhood Plan*.

At this meeting they are asking to modify the neighborhood plan and skip entirely the requirement of the *University Area Neighborhood Plan*. They were in the university area and everything in the area that was built must be compatible with the housing around it in terms of density, scale, setback, height, building utilization, and site utilization. The proposed development violates 100% of those requirements, the staff, and the developer acting like they do not need to touch the *University Area Neighborhood Plan*, liable to a suit and he wished the city did not do planning in that manner. Approval of the proposed project would open a Pandora's box around the university area by allowing OCR-1 zoning, which he believed could go up to 180 feet. The developer could not say what the specific uses were in the plan that was presented last month to the planning commission. If the city wanted to increase the traffic problem by 400% in the university area, the subject plan would do it. The way the university used to do planning was to have vacant land blowing dust. As a result of a great deal of organization the university current paves vacant land. The university declared boundaries and promptly proceeded to violate those boundaries. The way they plan currently is not to solve their housing problem and a private developer can now come in, buy a block or buy frontage on Sixth Street or Euclid, Speedway or Campbell, tear it down and develop it to a very great height. If the city wants a higher and denser university it should be planned comprehensively and carefully. Everyone wants a better Tucson and an economically viable Tucson. Doing it project by project is crazy. It will not provide a comprehensive view.

In his opinion, the subject project opened a Pandora's Box as great as the urban renewal of the 1960s. The numbers of houses and blocks of people, as well as the economic potential for destroying that and creating something else should be looked at. The problem is it was being done piecemeal, by a project. He believed the process was exactly as he said. He believed in this day and age of weapons of mass destruction that the council had tremendous misinformation. The staff was telling them that the proposed plan really was in compliance with compatibility. The *Land Use Code* spelled out what compatibility means. It was not vague, not someone's opinion, it was not zigzags. It spelled it out very clearly and the proposed project did not comply. He believed if the city could do urban renewal again it would not do it in the same manner, in a rush, in four months or even one year. They would look specifically at the economic results. Everyone says they do not want Tucson to become Phoenix, but the proposed project was the

second highest density in the city. It belonged on River Road or in Oracle, or in Phoenix. It did not belong in Tucson. It was unbelievable to him that people could speak of building the best of Tucson and tearing down the important neighborhoods that it has in such a callous manner. He hoped the council would not approve the proposed amendment and that they would send the project back to the drawing board and look at it very carefully. The implications would be negative for the inner city of Tucson.

Paul Schwam, said he wanted to reinforce Mr. Mackey's opinion that it was not necessary to rezone the entire property and asked the council to reject the proposed amendment. Not because he did not like the plan, he did like it, he thought it looked very nice, but there were a lot of discrepancies in the elevation, the site section and the text. Looking at the map, it showed the site section had a two-story impact on the neighborhood. He remembered seeing in the text the comment that two-story houses with the option of partially underground, or maybe not even underground parking, were proposed and said that would be a three-story impact. The drawings clearly showed a flat site and that was deceptive because the site is not flat. It tapers down one floor, so in that language there was an opportunity for a three-story impact on the neighborhood, but the neighborhood has only seen a two-story impact and that was how they made their decisions, not on the text. He knew if the project was approved it would be the text that would take precedence. That was a concern to him.

What he was asking the council to do was turn down the amendment and in the future he asked that the council rezone all non-residential properties in the Sam Hughes Neighborhood down to R-1. At the same time, the city should grant grandfathered rights of commercial use so that everything is allowed to be there. Any future development could remain R-1, and the nonconforming use could be expanded. He thought this project involved a phenomena where rezoning was like a blanket that covered existing use, but also included so many other things. That created an opportunity, a toehold, for any developer to buy the property and say the zoning allowed them to do certain things. That was not the intention in the beginning and it was actually dangerous to the neighborhood. He asked the council to give the developer what he needed, not what they want. Mixed use was dangerous and a toehold for the future. Even though they were not using the zoning that they do not want, it would try to downzone. Nevertheless, rezoning in the future with the mixed use was a toehold in the future that was not going to work and would be very dangerous.

He said he had a great analogy and asked if the council ever watched the Indianapolis 500, a road race that goes in circles. Characteristic of that race was that the leaders eventually lap the field and were in the back. So, any spectator not really monitoring the blow-by-blow of the race that walked in and looked at it would see the losers as the leaders if they don't have good documentation. Sometimes the losers act like leaders and with very careful coordination actually control the race. Mr. Schwam said that was a great analogy for what was going on because, most specifically, as a spectator, he went to a special meeting of the Sam Hughes Neighborhood, before one of the planning committee meetings, where they took a vote on what the neighborhood was really approving. There were a lot of compassionate speeches, including Jim Keene's, although it was not his that made the point. That was done by some man in the back who said if the neighborhood did not approve the plan, they would get student housing. That was like Ebola to the neighborhood. Nobody wanted that, so the approval was not for the plan, it was really against student housing. That was part of the road race in this case

that people cannot see. What he wanted to do was point out that any housing in the subject area was going to become student housing no matter what and no one wanted to live next to student housing, that would erode the character of Sam Hughes. As in any city there are icons. Sam Hughes is an icon, the University of Arizona is an icon and in this case one icon was eroding another rather surreptitiously.

John O'Dowd, said he resided within the mile square area which was represented by the Sam Hughes Neighborhood Association. He was a board member, but a dissenting member in the board's approval of the plan. He believed that considering mixed use would permit the developer to utilize the plan already existing and if not come up with a kind of project which is overly dense. He wanted to point out that he did not think the neighborhood had any notice that mayor and council was considering the exchange of property. If it was to be part of the plan amendment, it should have been noticed for the public hearing and the planning commission should have considered it. Also, no compatibility study was done which is required by state law before an exchange of property takes place.

Mr. O'Dowd concluded that the neighborhood association and the neighbors had reacted out of fear and the points were well taken by the two architects who spoke against the amendment and believed that the mayor and council should deny this amendment for legal reasons and for reasons of inequity and to preserve the neighborhood.

Ted Hinderaker, Street, indicated that his residence is two blocks from the subject site and that he supported the proposed plan amendment and the exchange agreement. He expressed that there was probably not a better parcel for mixed-use development in the city. Following several neighborhood meetings, board meetings, this was the proposal accepted as the best alternative. The majority of the people in the neighborhood preferred it over other alternatives. He asked that the process move forward so that the proposal had an opportunity to be built and go forward. The exchange agreement was contingent upon the final approval by the city of the rezoning and the city approval of the development plan. He urged the mayor and council to adopt the plan amendment exchange agreement.

Michael Koretz, indicated his residence is directly across the street from this development, and he urged the mayor and council to move forward with this proposal and approve the plan amendment and take it to the next stage and address the zoning issues that need to be addressed.

It was moved by Council Member Ronstadt, seconded by Council Member Dunbar, and carried 7 to 0, to close the public hearing.

Mayor Walkup asked the city clerk to read resolution no. 19662, by number and title only.

Resolution No. 19662

Relating to planning and zoning; amending the *Sam Hughes Neighborhood Plan* to allow mixed use office/commercial/residential in the vicinity of Campbell and Sixth Street; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

Council Member Ronstadt commented that there were some important things that needed to be stated. The cooperative activity shown between the city, the neighborhood, the developer was rewarding. They had tried to produce a quality project to benefit the neighborhood, the residents and the city of Tucson. He praised the Sonoran Institute for working with the neighborhood and the city to produce a project that they can all be proud of. Council Member Ronstadt thanked the city staff and city manager because they were the ones that worked to hold everyone's feet to the fire.

It was moved by Council Member Ronstadt, seconded by Council Member Dunbar, to pass and adopt resolution no. 19662, and direct the city manager to review the amendment and identify potential revisions that narrow its scope once the subsequent rezoning has been approved.

Council Member West commented that it was particularly important in the city manager's recommendation to include that mayor and council direct staff to review the amendment and identify potential revisions that narrow the scope once mayor and council have approved any subsequent rezoning case. It was clear why it was worded in that manner. The testimony was invaluable and she thanked all who attended for helping her understand the project in another ward which she thought would be very attractive. She thanked everyone for their participation in this process.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Resolution no. 19662 was declared passed and adopted by a roll call vote of 7 to 0.

22. REAL PROPERTY: VACATION AND EXCHANGE OF CITY RIGHTS-OF-WAY WITH LA COLONIA SEIS APARTMENTS

Mayor Walkup announced that city manager's communication number 451, dated August 4, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9884 by number and title only.

Ordinance No. 9884

Relating to real property; vacating and declaring certain City-owned rights-of-way in the vicinity of Sixth Street and Campbell Avenue to be Surplus, and authorizing the exchange thereof to La Colonia Seis Apartments, L.L.C., in exchange for the dedication of certain other rights-of-way; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ronstadt, seconded by Council Member Dunbar, to pass and adopt ordinance no. 9884, to approve the vacation and exchange of rights-of-way with La Colonia Seis Apartments, L.L.C. and to authorize the mayor to sign the offer to exchange upon the completion of the legal description for Seventh Street and the schedule for exhibit D.

Mayor Walkup asked if there was further discussion.

Council Member Leal expressed that he felt it was suspect that the city would give taxpayer property to the developer to pay us for something they would have to give us in the rezoning process later. Council Member Leal thought that this was inappropriate and he did not know if this had been thought through because this should not be part of the deal.

James Keene, city manager, responded that one of the things to be recognized is that which has been borne out by the testimony by the citizens was that this was not just a situation where a property owner is completely on his own initiative pursuing a rezoning. The development opportunity exists under zoning and part of the attempt to move to a different development plan with different rezoning had been desired by the neighborhood and by the city in its behalf and it was not unusual for a city to partner in a negotiation and make such arrangements to ensure that the rezoning does proceed.

Council Member Leal stated that if the city was up front they would say we were making this contribution. What the city was doing is giving a piece of taxpayer property to the developer, which may violate the state gift clause.

Mr. Keene indicated that they have carefully reviewed this with the city attorney. The second issue to be aware of was that this entire exchange agreement was conditioned upon the approval of the rezoning itself. It would not occur unless the development moves to the next stage which was the rezoning.

Council Member Leal said that was what he was objecting to that in the rezoning process, for the city to say yes to the rezoning, they would have to give us the property we want them to dedicate to us without us giving them something—like property. So if the city can get what it needed without giving property, a public resource, we should do that. For us to give them the money to pay us for what the property is worth seems very suspect.

Michael House, city attorney, indicated that whether or not we could obtain the right-of-way in the rezoning was not the issue before them, just because we might be able to obtain it did not mean that we would necessarily have to ask for it or that if we could legally require all of this right-of-way because we do not know what the difference in traffic generation would be between what was allowed under the existing plan and zoning and what would be allowed under this. However, the question, is what we are obtaining of equal value to what we would be giving up and it is.

Council Member Leal restated his question. Was it possible for the city to get what it wanted through the rezoning process? He thought it should wait until then to do that and if there was a shortfall then we should look at whether it made more sense to do it in sum dollars or a piece of property that may be worth more than the shortfall. It was premature to do it this way.

Mr. House interjected that as a legal proposition that we can exchange these properties if they are equal at this time. Whether you should do that is something else.

Council Member Ronstadt stated that this was something that had been discussed with the city manager and the neighborhood and this project was so unique in so many ways. One, it was a partnership between the neighborhood and the developer. The whole issue of the right-of-way exchange with the property from the developer, the closing of Seventh Street, these things had all been negotiated through a seven-month process between city and the neighborhood and the developer so talk about public assets, these were public assets that reside within a specific neighborhood association, within a specific neighborhood that had been working with the developer and with the city to make this positive new style development in the community happen. Somewhere along the line someone described this as an operation where you had to monitor and maintain balance between all parties. So until the final rezoning was done and until the day the retail opens and the first person moves in, there was a great deal of uncertainty between city, developers and neighbors. These things had been negotiated and put in place to mitigate some of that risk.

Mayor Walkup asked for a roll call on the motion.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: Council Member Leal

Absent/Excused: None

Ordinance no. 9884 was declared passed and adopted by a roll call vote of 6 to 1 (Council Member Leal dissenting).

23. PUBLIC HEARING: PROPOSED AMENDMENT TO THE *RINCON SOUTHEAST SUBREGIONAL PLAN* TO ALLOW RESIDENTIAL USE ON VACANT LAND

Mayor Walkup announced that city manager's communication number 446, dated August 4, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing with respect to an amendment to the *Rincon Southeast Subregional Plan (RSSP)* to allow residential use on vacant land. Staff had a presentation prior to the public hearing.

Albert Elias, comprehensive planning task force director, said that this was a proposed amendment to the *Rincon Southeast Subregional Plan (RSSP)* to allow residential use on a 65-acre site. The plan designation would allow office, commercial, park industrial uses as well as residential on the site. The 65-acre amendment site was part of a larger development which already had the multifunctional corridor designation. In considering the plan amendment, one of the key considerations was the existing residential development in the area as well as the opportunity to allow more intense residential development than was currently allowed with the existing zoning in place. There were concerns raised related to the proximity to the landfill and the area immediately adjacent which was used as a burrow pit and ultimately as a detention basin for the landfill and how those would impact the development on the site.

The proposed amendment language that was being recommended include items that specifically address these issues as well as notifications to property owners about the activity as well as requirements that this occur at the time of any transaction sale of property.

He noted that this site was immediately adjacent to existing residential use with access via Wilmot Road to I-10. He also noted that in this case the recommendation from the city manager was to change the land use designation from Urban Industrial to Multi Functional Corridor.

James Keene, city manager, added that the manager's recommendation does recommend this change. The fact that there was an existing residential and the plan allows for Urban Industrial, some of the adjacency issues exist and the landfill potentially exists with the industrial use there that was heavily factored in the plan. He also stated that from his own experience in other jurisdictions residential properties in proximity of major landfills get to be huge issues over time and he could understand concerns about that issue and obviously the council was free to make their own decision on this plan amendment.

Mayor Walkup asked if the applicant or representative was present.

Mike Grassinger, The Planning Center, addressed the landfill issue and said that during the subsequent rezoning of the property they would definitely address that as it came forward. There would be significant buffers incorporated into the plan. This would give the opportunity for the extension of Los Reales down to Wilmot Road and this was already zoned for residential just as the property to the south of the property, but believed that a higher density residential was more in keeping with the goals of the city and met the policies and goals of the *General Plan*.

Mayor Walkup announced that the public hearing was scheduled to last no more than one hour. Speakers would be limited to five-minute presentations. He asked if anyone in the audience wished to speak. There was no one.

It was moved by Council Member Ronstadt, seconded by Council Member Dunbar, and carried 7 to 0, to close the public hearing.

Mayor Walkup asked the clerk to read resolution no. 19661 by number and title only.

Resolution No. 19661

Relating to planning and zoning; amending the *Rincon/Southeast Subregional Plan*, Map Detail #9-RSSP-Wilmot/I-10-RSSP; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

Council Member Leal expressed that he thought this buffered the existing residential area from the I-1 zoning and was a positive change in the area.

It was moved by Council Member Leal, seconded by Council Member Dunbar, to pass and adopt resolution no. 19661.

Mayor Walkup asked if there was further discussion.

Council Member Ronstadt indicated he did not support the plan amendment since it had to do with the landfill. Ten or twenty years from now there may be a group of people who would not appreciate living next to a landfill and the landfill now had a life expectancy of 60 years and then the city would have to find somewhere else. It did not make sense to rezone and allow people to purposefully live next to an active landfill.

Council Member West explained that there were existing housing developments in the area. She also had some environmental concerns about this and would not support this issue.

Council Member Ibarra asked Mr. Grassinger if he had thought about continuing this item until September.

Mr. Grassinger said they would be happy to continue the item if that would give the mayor and council some time to make them more comfortable.

Council Member Leal withdrew the motion.

It was moved by Council Member Leal, seconded by Council Member Dunbar, and carried by a voice vote of 6 to 1 (Council Member Dunbar dissenting), to continue this item for 60 days.

24. CALL TO THE AUDIENCE, for those persons desiring to speak.

Mayor Walkup announced that this was the time when the mayor and council invited any member of the audience to come forward with any matter of importance for the attention of the council. Speakers are limited to three-minute presentations. He asked if anyone wished to address the council.

A. Item No. 22

John O'Dowd, stated that he could not believe the council approved the sale and exchange of property. He wanted to point out that it included Seventh Street; that the exchange would let the developer pay for it by putting a park on it. The figures available on the website show what the value of doing this bicycle park would be and whether it approximated the \$44,000. The developer is anticipating it the rezoning because he wants that for parking because the development is going to overflow and he is going to clear Seventh Street. So we were giving him a street and he never told the neighborhood association that he would be asking the city to give him Seventh Street and he would maintain the park in exchange for that. We thought he was such a great guy, he was going to put a bicycle park there.

He noted ARS 9-461.07c that requires the city's planning department to do a specific study and make a report to mayor and council before sale of city property. This requirement is a state law and it is required before a vote can be taken on the sale and exchange of city property. The purpose of the study is to show whether it complies with the plans. There are many reasons why the sale of Seventh Street does not comply with the *University Area Plan*, the neighborhood plan, but none of that will be included in the

staff report. The city attorney will acknowledge that state law requires that and he could not believe that the mayor and council approved it without that report and also without notice to the neighborhood or any kind of meeting. Finally, to do a sale is contingent on the rezoning, what does that mean? How does it configure with this? Usually when the developer asks for a rezoning he has got to dedicate some property. That's just part of the process and we are allowing him not to do that.

B. Notice Procedures for items of public interest

Bill Katzel, indicated that he could not speak at the first call to the audience because the agenda item that he wanted to testify on was agendized as a public hearing. He had tried to see Council Member West with his objections but her staff already had predisposed disposition for the developer. He did not know that this item was going to be heard until he received a notice from the city clerk, Kathleen Detrick. So he felt the public interest was not represented. He commended mayor and council for deferring the item and not running it through a rammed-through process. He formally requested that he be notified of all meetings and urged the mayor and council to direct staff to improve notification procedures for items of public interest.

Council Member West responded to Mr. Katzel that her office procedure is that anybody who wishes to meet with her is invited to do so.

C. Item No. 22

Paul Mackey, expressed his personal disappointment with the mayor and council's conduct since he was not allowed to speak during Item no. 22 even after completing a request to speak card.

D. Item No. 11

Robert Royce, thanked the mayor and council for approving Item no. 11. He felt that they had done the right thing. On the issue of whether the sensible transportation plan is appropriate right now, he disagreed with the mayor. He thought that the time to do it would have been 15 years ago and 15 years from now would be too expensive so it is time to do it now. Finally, he wanted to remind everyone that it was their goal to build a first-class Jeffersonian city and go to an elected administration and turn the council into a strictly legislative body.

25. ADJOURNMENT: 9:42 p.m.

Mayor Walkup announced that the council would stand adjourned until its next regularly scheduled meeting to be held on Tuesday, September 2, 2003, at 2:00 p.m., in the Mayor and Council Chamber in City Hall, 255 W. Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the mayor and council of the city of Tucson, Arizona, held on the 4th day of August, 2003, and do hereby certify that it is an accurate transcription of the magnetic tape record of said meeting.

MANAGEMENT ASSISTANT

KSD:DA:DP:mjv
Pr agnst tp:dp